

University of Alberta

**Prostitution, patriarchy and the "whore" stigma:
Examining prostitution theory and policy in the Netherlands, Sweden and
Canada**

by

Lindsey Doherty Oosenbrug ©

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Abstract

Female prostitution is a complex and divisive issue for feminists and policymakers in Western industrialized countries, creating a debate between liberal/sex radical feminists who view it as a legitimate form of work, and radical feminists who view it as a form of exploitation and victimization. This study presents three case studies, including the Netherlands, Sweden and Canada, where prostitution policy approaches are influenced by the discourse employed by feminists and others to conceptualize female prostitution. In reviewing the successes and failures of the policy approaches taken in each country, this study attempts to show that the essentialist definitions of "the prostitute" used in understanding prostitution are insufficient to represent the full spectrum of women's experiences in prostitution. As a result, these policies have not reduced the harms of prostitution because they fail to challenge the patriarchal foundations of the "whore" stigma that constrains women's sexual and social freedom.

*To my professors, colleagues and family who supported and encouraged me in my
education, especially my parents Helen and Bas, and my husband Duc*

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Introduction

Of all the issues that feminists contend with in Western society, one of the most divisive is the issue of female prostitution. As Shrage (1994, 82) states,

Feminist theorists disagree about the social origins and effects of prostitution and, consequently, about its social meaning and moral status. More specifically, some see prostitution as a profound symbol for the degradation and domination of women, whereas others see prostitution as merely unconventional and sometimes demeaning work that nonetheless women should be allowed to choose.

Prostitution, defined in this study as the exchange of sexual services for financial or material gain, is a complex phenomenon; as Pheterson (1996, 63) says, "being a prostitute is a female role for which there is a mixture of radical contempt, compassion, support, and opposition." It is not surprising, then, that for most governments in Western liberal democracies, formulating laws and policies to deal with the issue of prostitution presents many challenges. They must determine the goals of these laws and policies: the punishing of some or all participants in the prostitution exchange, the regulation of prostitution as a legitimate industry, or the complete eradication of prostitution. They must determine how to balance the harms of the sex industry with the demands from women who claim a right to sexual self-determination. At the most basic level, they must answer the question: is prostitution inherently harmful to women and society, or is it a legitimate economic alternative for women?

The answers to these questions provided by the dominant discourse on prostitution in each country often coincide with the different policies and laws that governments adopt. The goal of this study is to conduct a comparative analysis of feminist frameworks (and one non-feminist framework) that play a role in shaping policy approaches to prostitution in three Western industrialized

countries, in order to assess their effectiveness in addressing the challenges of prostitution, and to examine the reasons for their shortcomings. I hope to demonstrate that, through an examination of the various successes and failures of the application of different prostitution policy approaches, it is possible to develop a greater understanding of the underlying issues and assumptions that shape prostitution in Western society, and to arrive at conclusions about the appropriate goals of prostitution policy, and how to achieve them.

In this study, I compare the normative underpinnings of policy approaches in three country case studies: 1) decriminalization leading to formal regulation and legalization, as occurs in the Netherlands; 2) abolition, through the criminalization of the exploiters and decriminalization of exploited women, in the context of viewing prostitution as violence against women, as occurs in Sweden, and; 3) indirect prohibition through the criminalization of many of the associated activities of prostitution, as we have in Canada. I examine how and the extent to which each of these approaches are informed and influenced by feminist and other political discourses in each country. I also review literature about the outcomes of these policies, noting their relative successes and failures in achieving the stated policy objectives, as well as in achieving the overall feminist goal of improving the situation of prostitutes and society as a whole.

The purpose of this study is to apply critiques of the feminist theories on prostitution and the policies that have been enacted as a result, to determine how prostitution policy, particularly in the Canadian context, may be rendered more effective in protecting the health and lives, but also the human rights and

freedoms, of women involved in prostitution. I propose that policy approaches to prostitution should not be restricted to choosing sides between the feminist perspectives of "prostitution as work" and "prostitution as oppression," but should instead be informed by the wide range of women's experiences in prostitution, while at the same time focusing on deconstructing the structural factors that have traditionally shaped and restricted women's sexual, social and economic roles in Western society.

This paper is divided into three chapters. The first chapter examines contrasting feminist (and some non-feminist) approaches to the study of prostitution, divided broadly into "pro-prostitution" and "anti-prostitution" approaches. The perspectives included in the "pro-prostitution" approach, which views prostitution as a viable form of work, include sexual libertarianism, liberal feminism, and sex radicalism. In contrast, the perspectives that comprise the "anti-prostitution" approach view prostitution as a form of oppression, and include religious moralism, anti-(heterosexual)-sex (radical) feminism, and sexual romantic (radical) feminism. This chapter attempts to illustrate how these perspectives construct prostitution as a "problem" according to their normative underpinnings and the image of "the prostitute" they rely upon.

The second chapter of this study explores some of the policy recommendations implied by each approach, and looks at how these approaches are translated into practice in the cases of the Netherlands, Sweden, and Canada. It provides a brief history of the development of prostitution policy in each case, followed by an examination of the policy discourse used in the debate, the policy

actors and processes involved, and the results of these policies on women in prostitution and all women in society. This section proposes that the overall result of these policies has been the increasing marginalization of the most vulnerable groups of women in prostitution, and that these policy approaches remain largely ineffective in eliminating the harms of prostitution and improving the situation of all women.

The third chapter of this study offers a critical analysis of the feminist approaches to prostitution and of existing policy approaches to prostitution. Examining the ideas of various prostitution theorists, this analysis proposes that policies to address prostitution are flawed because the feminist approaches that influence them are based on essentialized images of "the prostitute," meaning that they tend to reduce prostitution to singular meanings and to construct stereotypical prostitutes. The multiplicity of forms of prostitution, of prostitutes' experiences and circumstances, as well as cultural and historical constructions of the meaning of prostitution, or of female sexuality, is often lost in the competing feminist interpretations of prostitution. Thus, for example, a radical feminist interpretation of prostitution as a manifestation of patriarchy tends to reduce the diversity of relations between men and women to an oversimplified model of dominance-subordination. In doing so, they may unconsciously adopt positions that are barely distinguishable from Victorian attitudes that stigmatized women for their transgression of Western society's entrenched sexual codes. At the same time, a sex radical interpretation reduces prostitution to a subversive sexual practice that can be liberating for women, while failing to challenge the structural

inequalities that characterize much of the practice of prostitution. As a result, I argue in Chapter Three that what is required is an approach that allows for multiple understandings of women's experiences in, and reasons for entering prostitution, to create an approach that allows for women's agency and the radical potential of subversive practices, while at the same time recognizing and challenging the patriarchal foundations of society that create the "whore" stigma and other forms of gender inequality.

The concluding section proposes policy approaches that may, in light of these findings, provide a more effective solution for addressing prostitution and reducing the harms to women in the trade. Some of these proposed solutions include the decriminalization and deregulation of prostitutes, consultation with women in prostitution, and education of the public and government policy-makers. At the same time, I propose that governments need stronger enforcement of laws against violence against and the exploitation of women, the creation of greater economic opportunities for women so that they are not forced into prostitution by economic necessity, and support for women who choose to remain in the trade, including access to health, education, and social programs.

Methodology

For this study, I conducted a literature review of the various feminist and non-feminist approaches to prostitution, in journal articles, books, and reports from government agencies and independent agencies. Though the names given these concepts were not always consistent across the various sources and contexts, for the purposes of this study, I have done my best to group together the various

strains of thought and give them titles that I feel most closely represent the theorists' meanings, and these are described in the appropriate chapters.

In addition, I chose to use the term "prostitutes" or "prostitute women" for this study to refer to the group around which the research is based. The use of the liberal feminist term "sex worker," the reclaimed use of the term "whore" by sex radical feminists, and the ascription of exploited "victim" status to women in prostitution were not employed, as these terms are part of specific discourses with specific aims in shaping understandings of prostitution. As mentioned, this study aims to provide a neutral representation of the various perspectives on prostitution, rather than the biasing of one over the others with the adoption of a consequent discourse.

This study is restricted to an examination of prostitution among heterosexual adults where the prostitute is female and the client is male, as these relations describe the vast majority of prostitution activities taking place in the context of Western industrialized countries. Issues of child prostitution, male prostitution, and transsexual prostitution will not be discussed because, while these cases may enhance understandings of prostitution, they require an analysis of factors that are beyond the scope of this study. As well, this study focuses to a greater degree on women who make a choice to engage in "voluntary" prostitution, as opposed to those in "forced" prostitution, including situations where women and girls are trafficked and/or held in positions of sexual slavery or debt-bondage (which this study discusses in some areas as a separate, but related, issue). This forced/voluntary distinction is problematic, however, when applied

to women who prostitute for economic survival, to support a drug addiction, or as a consequence of a history of sexual abuse. As such, it must be noted that the forced/voluntary distinction is rejected by most radical feminists who claim that all prostitution is forced and that the concept of "choice" does not exist for prostitutes. While this study attempts to provide a neutral examination of the issue of prostitution, and does not attempt to resolve such major debates, it will, however, accept the position held by liberal and sex radical feminists that women can, and in many cases do, exercise free will in becoming prostitutes, as rejecting this idea would deny prostitutes' agency altogether.

I look at prostitution policy in three advanced industrialized societies: the Netherlands, Sweden, and Canada, each of which have adopted significantly different policy approaches. The Netherlands and Sweden were chosen as case studies because their policies are considered in much of the research to closely exemplify and correspond with the main feminist perspectives on prostitution ("prostitution as work" in the Netherlands and "prostitution as oppression" in Sweden). Canada's approach, on the other hand, is not particularly associated with a feminist discourse about prostitution, and represents a third approach, which I characterize as concerned with the "public nuisance" aspects of prostitution. While these countries present many differences in their histories, cultures, and political environments, I feel they are appropriate for comparison because they are all Western liberal democracies, with relatively similar levels of human development¹ and economic development² (UNDP 2006, 283). Also,

¹ According to the 2004 United Nations Human Development Index, the Netherlands was ranked 10th, Sweden was ranked 5th, and Canada was ranked 6th.

these countries all have a history of feminist activism working toward greater gender equality; however, as will be seen, the theoretical frameworks employed by these feminist movements, and their inclusion in the political process, differ greatly.

While I attempted to review a wide variety of journal articles, books, and government reports to gain information on the impacts of the prostitution policies in these countries, it must be noted that it is very difficult to obtain quantitative information about underground prostitution practices, due to their criminalized nature. The lack of sufficient data to support empirical claims (e.g., regarding the numbers of women in different categories of prostitution, or the effectiveness of various policies) is certainly a problem for researchers in this field. My argument relies upon the evidence available, when it comes to such claims. Despite its limitations, this evidence does allow us to see some of the problematic aspects of current policies.

Clearly, there are innumerable dimensions of the issue of prostitution that could be examined, including the ways in which prostitution is shaped by questions of race, ethnicity, nationality, sexual orientation, and many other factors. This study focuses on the sociological and historical factors that affect the construction of prostitution and the wider issue of women's sexuality in mainstream modern Western society. It is clear, however, that all of the identities I list above play a role in explaining the causes and conditions of, as well as responses to, prostitution.

² In 2005, the Netherlands' GDP per capita was \$31,789, Sweden's was \$29,541, and Canada's was \$31,263.

Chapter One: Feminist Perspectives on Prostitution

Prostitution is a highly divisive issue for feminists, stemming from conflicting views about the nature of sexuality, patriarchy, and commercial exchange, or from the image of "the prostitute" as a helpless victim or an empowered "sex worker." Over the past three decades, feminist theorists have developed two main opposing frameworks for understanding prostitution, and for proposing policies to address it. While the opposing sides of the debate share the common goal of improving the situation of prostitutes and all women in society, their ideas about what this entails differ dramatically. On the one side, the "prostitution as work" perspective is concerned with the labour and human rights of prostitutes, and advocates the liberalization and normalization of prostitution as a means of bringing "sex workers" into mainstream society where they may enjoy the same legal status and labour standards as other workers. On the other side, the "prostitution as oppression of women" perspective argues that prostitution perpetuates the sexualization and commoditization of all women's bodies, reinforcing gender inequality within society, and therefore should be abolished completely.

This debate is not a purely academic one; its outcomes, when translated into policy, have tremendous consequences for workers in the sex industry, and reflect and define women's sexual, social and economic roles in society at large. In this first chapter, I introduce the two main sides of the debate among feminists surrounding prostitution within Western industrialized countries, and ask, how

does each of these approaches construct the "problem" of prostitution, and what image of "the prostitute" does it rely upon in this construction?

Theoretical approaches to the "problem" of prostitution in the literature can be roughly divided into the "pro-prostitution" position and the "anti-prostitution" position, although these labels are somewhat problematic in that they fail to capture the breadth and complexity of the perspectives presented; therefore, this section will include a description of the sub-categories within both positions. Under the "pro-prostitution" heading are groups that accept or endorse the existence of prostitution. The first of these is the libertarian perspective, which views prostitution as a matter of individual free will detached from structures of gender dominance, and as an activity that consenting adults should be able to engage in freely without restrictions.

The second main strain of thought within the "pro-prostitution" position is the "prostitution as work" perspective. This perspective is consistent with strains of liberal feminist thought, which do, to some extent, identify power relations in the practice of prostitution, but view the main problem as the violation of prostitutes' labour and human rights. Along with the liberal feminist perspective, the "prostitution as work" approach is also infused with what is referred to as the "sex radical" perspective adopted by many prostitute activists, which views prostitutes as an oppressed sexual minority within Western society's system of "compulsory virtue"³ (Nagle 1997, 5). Proponents of this perspective are "pro-prostitution" in the sense that they do not oppose prostitution *per se*, but they

³ Nagle uses the term "compulsory virtue" in reference to Adrienne Rich's (1980) notion of "compulsory heterosexuality," which describes the imposition by (a heterosexist) society of heterosexual norms on women through myth and stigma regarding sexual orientation.

remain critical of the harms of prostitution and the violations that women in the sex trade endure, which they view as directly resulting from the marginalized and criminalized status of prostitution and prostitute women.

Under the "anti-prostitution" heading are groups that are against all forms of prostitution, and wish to see the practice eradicated, for different reasons. The first of these is the moralist position, often associated with religious groups, that views sexual impropriety as a "sin" and prostitutes as "fallen women" to be rehabilitated. Another "anti-prostitution" perspective is the "prostitution as oppression of women" perspective of radical feminists, who view prostitution as an institution of commoditization and patriarchal domination over all women, whom the prostitute represents.

Because this study focuses on *feminist* approaches to prostitution, the two positions that will be discussed in this section are the liberal feminist/sex radical "prostitution as work" perspective and the radical feminist "prostitution as oppression" perspective, although a brief overview of other related "pro-" and "anti-prostitution" perspectives is necessary to differentiate them from the feminist perspectives, as they are often conflated and confused with feminist theory. This section critically examines the understandings of prostitution based on the assumptions made about the image (and stigma) of "the prostitute" and the experience of prostitution in each approach and the use of particular groups of prostitutes to support each perspective.

1.1 "Pro-prostitution" perspectives

The label "pro-prostitution" can mean many things. There are some parties – such as the clients and those with a financial interest in the sex trade – who are pro-prostitution for obvious reasons, namely to make use of, and profit from, the prostitution transaction. These parties are concerned with their own self-interest as consumers and profiteers, rather than with feminist concerns about the institution of prostitution, and will not be the focus of this study.

From a feminist perspective, there are sexual libertarian theorists, such as Paglia (famous for saying, "the prostitute is not, as feminists claim, the victim of men, but rather their conqueror," 1994), who advocate prostitution for its own sake, as an activity to which individuals can ascribe their own meaning.

According to Chapkis (1997, 21), "because libertarians resist the idea that sexual meaning is fixed," it is up to the individual to "determine whether an act is right or wrong for him or her" – a libertarian notion of "consent" thus becomes "the ultimate measure of ethics of any sexual activity." She states: "this has the effect of individualizing the meaning of sex to the point where social structures such as gender inequality necessarily disappear from the account" (Chapkis 1997, 21).

Valverde (1985, 16) criticizes the libertarian position, describing it as a "form of self-delusion which minimizes history and sociology" in shaping sexual relations, as it denies "the importance of masculine power and other social forces governing our sexuality." She notes, "this individualist attitude is usually firmly anti-moralist to the point of being sometimes anti-ethical" (Valverde 1985, 16).

In contrast, the pro-prostitution "prostitution as work" perspective discussed in this study is not based on individualist or libertarian principles, but can be better understood as a "pro-prostitute" perspective, in the sense that it claims to advocate from the position of the prostitute. Along the lines of liberal feminist thought, the focus of the discourse is on labour and human rights issues, rather than on structural issues of patriarchy and gender dominance employed in radical feminist theorizing. "Prostitution as work" feminists, and some prostitute activist groups, argue that it is possible for women to choose to enter prostitution as a rational choice because it is an occupation that can provide them with considerably more personal and economic freedom than many other occupations.

There are also many "prostitution as work" theorists who take a sex radical perspective, including feminist anthropologist Rubin (1984), and go even further than liberal feminists, as they propose that, not only is engaging in prostitution not inherently oppressive, but it can represent an act of women's liberation and rebellion against the outdated structure of social morality that aims at controlling women's sexuality. Rubin proposes (1984, 279) that "modern Western societies appraise sex acts according to a hierarchical system of sexual value," in which individuals who only engage in heterosexual, monogamous, procreative sexual relationships are privileged at the top of the hierarchy, while groups at the bottom who are deemed sexual deviants, such as transsexuals, sadomasochists, and prostitutes "are subjected to a presumption of mental illness, disreputability, criminality, restricted social and physical mobility, loss of institutional support, and economic sanctions." She parallels this system of

hierarchy of sexual practices with ideological systems of racism, ethnocentrism, and religious chauvinism (Rubin 1984, 280), which grant virtue to the dominant groups, and relegate vice to the underprivileged. Instead, she argues, sexual acts should be judged "by the way partners treat each other, the level of mutual consideration, the presence or absence of coercion, and the quantity and quality of the pleasure they provide," and that factors such as the exchange of money "should not be ethical concerns" (Rubin 1984, 283).

Zatz describes (1997, 292) the sex radical position, stating that, in the context of prostitution, the selling of a sexual service need not have the same significance for all women, but depends on how a woman's sexuality has been constructed in relation to her individual history and cultural context. He states it is thus possible for sex workers to develop and cultivate particular ways of experiencing their work that differ from our prevailing understanding of prostitution as oppressive. Valverde (1987, 31) concurs that the sex radical perspective allows for the consideration of other possibilities in female sexuality, stating that "sexuality can, indeed, be a site of oppression, but it can also be a terrain for the development of women's positive and liberating desires, feelings and ideas," and an essential "aspect of women's liberation." Chapkis (1997, 29-30) summarizes the sex radical perspective in this way:

Practices of prostitution, like other forms of commodification and consumption, can be read in more complex ways than simply as a confirmation of male dominance. They may also be seen as sites of ingenious resistance and cultural subversion... Indeed, the Whore is often invoked by feminist Sex Radicals as a symbol of women's sexual autonomy and, as such, a potential threat to patriarchal control over women's sexuality.

Thus for "prostitution as work" feminists, both liberal and sex radical, the desired outcome of prostitution policy would be to give women the right to engage in prostitution as a normalized form of work in a safe and healthy environment.

The Prostitutes' Rights Movement

The roots of the liberal/sex radical "prostitution as work" perspective can be traced to the prostitutes' rights movement in the United States, Western Europe, and Canada (Kempadoo 1998, 4) during the 1970's and throughout the 1980's, when "a new image of prostitution emerged to challenge traditional views of prostitutes as social misfits, sexual slaves, victims of pimps and drug addiction, and tools of organized crime" (Jeness 1993, 1). At that time, prostitutes began organizing around the need to improve their working conditions, to combat hostility and violence toward them and their profession, to press for the decriminalization of prostitution in order to protect prostitutes from systems of legal and social control, and to reject public designations of deviance and instead be acknowledged as "sex workers" (Jeness 1993, 4). Bindman and Doezema (1997, 1) note that the terms "sex work" and "sex worker" were coined at that time by prostitutes themselves as a way of redefining prostitution not as a social or psychological characteristic of a class of women, but "as an income-generating activity or form of employment for women and men." As Jeness states (1993, 4), the movement not only sought "to legitimate prostitution, but to celebrate it as well," by developing "a radical critique of popular views of prostitution by

substituting a new ethic, one that affirms prostitutes' behavior as sensible and normal."

The most prominent name in the prostitutes' rights movement is Margo St. James, who is identified as "the first contemporary prostitute in the U.S. to speak out publicly for the rights of sex workers," and founder of the San Francisco prostitutes' rights organization COYOTE (Call Off Your Old Tired Ethics) (Pheterson 1989, 4). According to Pheterson (1989, 5), St. James' purpose in founding the organization was to "raise national consciousness about state and police abuse of prostitutes and to effect changes in laws and attitudes." By the late 1970's and 1980's, other prostitutes' rights organizations had formed in several U.S. cities, including New York's PONY, Massachusetts' PUMA, Hawaii's DOLPHIN, and many others. The National Task Force on Prostitution was also founded by St. James and feminist scholar Priscilla Alexander, in an effort to create a network of U.S. prostitute advocacy groups (Pheterson 1989, 5). Pheterson (1989, 6-7) further describes prostitutes' rights organizations that emerged in a number of countries between 1975 to 1985, including France, England, West Germany, Italy, Switzerland, Canada, Australia, the Netherlands, and efforts in the developing world, although many of these were "blocked by violence or social control."

Jeness identifies (1993, 1) many of the successes of the prostitutes' rights movement since its inception in the early 1970's, in "gaining visibility in the mass media and the world of government grants, foundation support, the academy, social science disciplines, and non-profit organizations." Today the "prostitution

as work" position has many adherents, not only among the women who work in the sex industry, but also among liberal and sex radical feminists, and human rights activists who emphasize the need for the equal application of prostitutes' rights to work without harassment by police and the public. The "prostitution as work" position has also been adopted by some international organizations that deal with global economic issues. The most important of these is the International Labour Organization (ILO), which, in 1998, supported a report that called for the economic recognition of the sex industry on the grounds that bringing prostitution into the mainstream economy would benefit prostitutes by ensuring their workers' rights and protections, and improving working conditions (Poulin 2004).

Arguments of the "prostitution as work" perspective

From the "prostitution as work" perspective, the root of the "problem" with prostitution lies in the outdated ideas about sexual morality and the negative stigma attached to prostitution in the dominant Western culture. It is proposed that perceptions of female prostitution are based on outdated views about men and women's roles and behaviours in society and the moral significance attached to sexual activities and identities. Gagnon and Simon state (2005, 166, 168): "our attitudes toward prostitutes are based on the same origins as our current conventional vision of the natural order that should exist between women and men – i.e. nineteenth-century English models," and, as a result, "the symbolic structure through which we experience the prostitute... is largely a cultural inheritance or cultural survival" from the Victorian era.

Gagnon and Simon state (2005, 167) that, in the Victorian tradition, the prostitute occupied a very particular and symbolically enriched role. Through the combined reforming and condemning impulse of Victorian society, the image of the prostitute was stylized, as an entire social apparatus was invented through which the prostitute could be experienced directly or in fantasy and put to "social use." The social use of a prostitute in Victorian England, according to Pateman (1988, 190), was determined by the idea that men possessed an uncontrollable sexual drive and prostitution was "a necessary evil that protected young women from rape and shielded marriage and the family from the ravages of men's sexual appetites." Implicit in this belief was the labeling of prostitutes as sexually deviant women who carried a heavily stigmatized social status that was reflected in all aspects of their lives (Pheterson 1990, 399). Gagnon and Simon note (2005, 166), however, that "though the contours of most of our society have changed in the intervening century, the available legal, moral, and social scripts that exist for the act of prostitution are remarkably stable."

The "prostitution as work" perspective argues that not only does the traditional Victorian view of prostitution provide an outdated reflection of sexual roles and relations between men and women, it is also directly or indirectly responsible for a great deal of the harm that is inflicted upon women who are prostitutes. According to advocates of this perspective, the stigma of prostitution and the treatment of prostitutes themselves as immoral, are institutionalized and perpetuated through the criminalization of the prostitute. They attribute the marginal status of prostitution, and the abuse and rights violations prostitutes face

in their everyday work, to the criminalization of the prostitute's actions: "the outlawing of prostitution enshrines into law the view that prostitutes are bad women, and thus legitimate targets for abuse" (Raphael 2004, 190). As a result, Pheterson argues (1990, 397), "the 'whore stigma', a social and legal branding of women who are suspected of being or acting like prostitutes, is a primary obstacle to achieving [their human and labour] rights throughout the world." Rubin argues (1984, 297) the sex radical position that the system of sexual stratification that places the "whore" on the margins of society "provides easy victims who lack the power to defend themselves, and a pre-existing apparatus for controlling their movements and curtailing their freedoms." She further argues (1984, 310) that the abuses against prostitutes reveal how "sexual persecution is not taken seriously enough" in Western society, as "there is systematic mistreatment of individuals and communities" on the basis of their outcast status.

While advocates of the "prostitution as work" perspective decry the stigma of immorality that victimizes prostitutes, at the same time they protest the radical feminist characterization of prostitutes as helpless victims, or as possessing "false consciousness" about their situation. For example, Shrage argues (1989, 357) from a radical feminist perspective that while some prostitutes claim that their work provides necessary "professional" sexual services, they are simply supplying a rationale to justify engaging in this harmful practice. Raymond (2003) suggests that some prostitutes claim to have made a free choice "because to deny their own capacity to choose was to deny themselves." While "prostitution as work" advocates recognize that many women end up in

prostitution because they are victims of coercion, current or past abuses, or economic circumstances, the idea that all prostitutes are victims is firmly rejected, in favour of an understanding of prostitution that emphasizes the agency of prostitutes, and their position as the subject rather than the object of knowledge.

This position was advocated by prostitutes at a 1985 Toronto conference, documented by Bell (1987), that brought together feminists and prostitutes. At this conference, the prostitutes protested that they did not want the feminists to speak authoritatively about the experience of prostitution, and that they resented the assumption that their work was necessarily demeaning and never freely chosen. Instead, they defended their right to be prostitutes, and the value, dignity, and liberty of the work, which many of them considered a "profession" (Bell 1987, quoted in Overall 1992, 705-706). As Pheterson (1989, 15) states, prostitutes are asking feminists "who have spent years debating prostitution without worker representation to suspend their preconceptions and their protectionist ideology and, for the first time in history, to recognize prostitutes' right to sexual and economic self-determination."

As mentioned above, the "prostitution as work" position does not, however, ignore the reality that some of the women in prostitution (although there are conflicting opinions about the exact percentage) are there against their will, controlled by third parties (pimps, madams, and traffickers), or suffering from extreme poverty or drug addiction. To account for this, the "prostitution as work" perspective makes a distinction between "forced" and "voluntary" prostitution. Through this distinction, women in forced prostitution are considered to be those

who have been coerced through threat of violence into the sex trade, or who have been trafficked against their will into another country and are trapped in a situation of debt bondage or physical imprisonment. Women in voluntary prostitution, conversely, are considered to have chosen of their own free will to engage in prostitution out of the options available to them. It must be noted, however, that the issue of choice remains contentious in prostitution theory. As Chapkis (1997, 52) points out,

very few women's lives are models of "free choice". Most women's "choices" are severely limited by their disadvantaged position within hierarchical structures of sex, race, and class. Gender inequality, coupled with extreme differences of wealth within and among nations, creates tremendous pressure on women to engage in any available form of employment, including sex work.

As such, the "choice" of engaging in prostitution cannot be viewed in a utopian context of absolute freedom, and must instead be viewed in the same way as any other "choice" that women (or workers) are faced with in our world: a context where choices are shaped and restricted by the social and economic expectations and limitations that most individuals, particularly women, face in their everyday lives.

Doezema states (1998) that since the mid-1980's, the language of international UN declarations and agreements on prostitution has adopted the distinction between forced and voluntary prostitution. This distinction has been used in documents such as the UN Declaration on Violence Against Women, to "denote forced prostitution and trafficking, rather than prostitution itself, as violence against women" (Doezema 1998, 40). While this may appear to be a victory for the liberal "prostitution as work" perspective, one of its advocates, Doezeema, challenges the use of this dichotomy, proposing that it does not ensure

that prostitutes' rights are recognized, but instead perpetuates the stigma of prostitution by dividing prostitutes into categories of "innocent" and "guilty" women. She proposes that the voluntary/forced distinction is "the wrong theoretical framework with which to analyze the experience of sex workers," as it has been subverted in such a way as to become "a new justification for denying sex workers their human rights" (Doezema 1998, 34-35). Doezema points out (1998, 41) that this distinction ensures that forced prostitution is strongly condemned, but argues that it is ineffective in promoting the rights of voluntary prostitutes: "No international agreement condemns the abuse of human rights of sex workers who were not 'forced'." She states this is largely because there is little agreement in the international community on

how to deal with voluntary prostitution; how it is to be defined, if it should be regulated by the state or left to the workers to organize, or even if it exists at all... [The distinction between voluntary and forced prostitution] can be seen as a compromise: those who, for whatever reason, wish to eliminate all prostitution can at least be satisfied that the 'worst' abuses are being dealt with and those who support self-determination are relieved that this right is not threatened (Doezema 1998, 41-42).

In addition, some theorists argue that the dichotomy between voluntary and forced prostitution creates false divisions between prostitutes, "into guilty/'voluntary' and innocent/'forced' prostitutes, which reinforces the belief that women who transgress sexual norms deserve to be punished. This division thus presents a threat to the entire concept of women's human rights" (Doezema 1998, 42). As Bindman and Doezema (1997, 4) state, "it runs the danger of reiterating the distinction between the 'innocent victim' who deserves pity and the punishment of those who have criminally abused her, and the willing 'whore' who has sacrificed her right to social protection through her degraded behaviour."

What should be done?

When it comes to solutions and calls for action, it is important to recognize that the "prostitution as work" perspective does not view the practice of (voluntary) prostitution as inherently negative or immoral, but considers the abuses suffered by prostitutes as "similar in nature to those experienced by others working in low status jobs in the informal sector" (Bindman and Doezema 1997, iii). This view contends that prostitution is a commercial enterprise above all else, as evidenced by the fact that women who engage in prostitution do so primarily, and often exclusively, for economic gain, in much the same way that the majority of individuals in the capitalist system sell their labour power to obtain the means of subsistence for themselves and their dependants. The logic is, then, why should prostitution be considered morally any worse than any other form of work that women engage in (Overall 1992, 709)?

Bindman and Doezema (1997, iii) argue that prostitution is considered differently from other forms of work due to the stigma it carries. This stigma affords prostitutes a marginal status within society and "excludes them from the international, national and customary protection afforded to others as citizens, workers or women," exposing them to human and labour rights violations. They state it is "because of the stigma and criminal charges widely attached to sex work" that police and others are allowed to harass prostitutes and to deny them basic rights. They and other "prostitution as work" feminists propose that if prostitution were legitimated as sex work, like any other kind of work, "then

prostitutes could be brought directly under the auspices of international labour law designed to protect the rights of all workers" (Sullivan 2003, 71).

According to Sullivan (2003, 70), legitimating prostitution as sex work requires advancing the status of prostitutes by shifting political and feminist debate away from abstract concepts of exploitation, morality and ethics, and towards the more concrete considerations that prostitutes face every day, including health and safety, wages, working conditions, and relations with employers and clients. The "prostitution as work" framework focuses attention on the economic conditions underpinning sex work, and hopes to displace popular and legal representations of prostitutes as sexually immoral women who ought to be subject to criminal penalties.

Prostitutes' rights advocates hold that if prostitution were to be considered as sex work, then society would no longer define prostitutes solely by their profession. Kempadoo (1998, 3) suggests that using the term "sex worker" would cause society to view prostitution not as an identity, but as an income-generating activity or form of labour. Sex work could then be experienced as an integral part of many women's lives, but "not necessarily as the sole defining activity around which their sense of self or identity is shaped" (Kempadoo 1998, 3).

1.2 "Anti-prostitution" perspectives

The "pro-prostitution" position is challenged by arguments from the "anti-prostitution" position, based on their diverging views about sexuality, patriarchy, commercial exchange and the image of "the prostitute." Although they may often

be considered together, it is important to distinguish the different strands of the "anti-prostitution" perspective, according to their view of the causes, problems, and meaning of prostitution. Doing so first requires distinguishing the moralistic "anti-prostitution" position (held largely by religious and right-wing conservative forces) from the radical feminist perspective. The moralist position, whether due to Victorian attitudes or religious conviction, views "prostitution as morally wrong, sinful, un-Christian, spiritual and physical weakness" (Flowers 1998, 158) and condemns all parties, including prostitutes, clients, pimps, and brothel owners. In some cases moralists wish to see prostitutes punished, in others they are viewed as "fallen women" who need to be rescued and rehabilitated.

The radical feminist "anti-prostitution" perspective (referred to here as the "prostitution as oppression" perspective), however, views prostitution as undesirable on the grounds that it represents and perpetuates the exercise of patriarchal (or, to some, male) domination over all women in society. This position, as mentioned above, rejects the idea that prostitution can be an uncoerced choice, because the patriarchal nature of Western society constrains the social and economic options available to women. Thus it rejects the liberal/sex radical separation between "forced" and "voluntary" prostitution, arguing that prostitution is "forced" by definition, and is, for some, a form of female sexual slavery. This perspective also views the sale of the body for sexual purposes as an inherently dehumanizing and psychologically damaging process that leaves many prostitutes with physical, emotional, and psychological trauma.

The Abolitionist Movement

The abolitionist movement has roots in the work of British and American feminist activists who organized against male vice and the perceived sexual double standard in the nineteenth century. Feminists and their supporters organized in 1869 to oppose Britain's Contagious Disease Acts, under which working class women who were suspected prostitutes were subjected to invasive "sanitary inspections." One key figure was Josephine Butler, who led the protest against the Act on the grounds that it "deprived poor women of their constitutional rights [and] sanctioned a double standard on sexual morality" (by excluding the male clients from examination) (Walkowitz 1980, 124).

After the Contagious Diseases Acts were suspended in 1883, the movement turned its attention to combating the "white slave" trade, which consisted of the capture and sale of young white women into sexual slavery in Europe and other parts of the world.⁴ Unfortunately, Walkowitz argues (1980, 127-130), Butler's campaign to liberate women from "white slavery" and the sexual double standard backfired, as her incendiary descriptions of male vice and female innocence (published in an exposé in the *Pall Mall Gazette* in 1886) provoked public outrage and gave rise to a social purity backlash.

As a result, social purity legislation was passed that gave police greater summary jurisdiction over poor women and children, and criminalized other

⁴ Walkowitz (1980) cautions that, while many historians accept the definition of the problem of "white slavery" given by Butler and other activists, authors such as Gorham (1978) and Bristow (1977) argue that there is little evidence to suggest that "white slavery" was as widespread in Britain as the feminists claimed at the time. Critics of the neo-abolitionist movement, such as Kempadoo and Doezenia (1998), make similar claims about the radical feminist portrayal of global sex trafficking today.

sexual activities such as homosexuality, brothel-keeping, and solicitation, with the underlying message that men must "protect and control their women" (Walkowitz 1980, 130). Walkowitz describes (1980, 130) how, begun as a libertarian struggle against the state sanction of male vice, the work of Butler and her colleagues "helped spawn a hydra-headed assault against sexual deviation of all kinds." Most of Butler's circle of feminist activists resigned when it became apparent that their efforts to promote women's equality had become overshadowed by the social purity movement. Walkowitz (1980, 130) proposes that "social purity permanently left its imprint on the [British and North American] women's movement," and that the "theme of the sexual wrongs perpetrated against women by men" permeates modern radical feminist consciousness.

The modern or "neo-abolitionist" movement, which traces its roots to Butler's work, emerged in the late 1970's and 1980's "in a context of increasing feminist activism against rape, battering, sexual abuse of children and other forms of male violence" (Pheterson 1998, 18). The "prostitution as oppression" perspective added prostitution to this list as a form of male violence. According to Pheterson (1989, 18), "together with struggles to define female sexuality, anti-violence activism led some feminists to equate heterosexuality, especially commercial heterosexuality, with female sexual slavery." This view was expressed in Barry's seminal work *Female Sexual Slavery*, in which she uses research on wife battery and other forms of violence against women to create "a model for understanding the victimization of women in prostitution" (Barry 1979, xi). However, Chapkis (1997, 51) critiques this approach, arguing that by

equating prostitution with other forms of sexual exploitation (including sexual harassment, rape, incest, and wife abuse, for which it makes no sense to distinguish between "forced" and "free"), abolitionists create a problem for sex workers:

If prostitution is a form of sexual violence exactly like rape and incest, then the rape of a prostitute becomes predictable, indeed redundant. If a prostitute always already has been violated, rape is unremarkable, no more than a sign of excess. And if a prostitute can never consent, then she can never be said to refuse consent (Chapkis 1997, 51).

The radical feminist "prostitution as oppression" perspective underlies some of the most important documents on sex trafficking and prostitution, including the 1949 United Nations *Convention for the Suppression of the Traffic in persons and of the Exploitation of the Prostitution of Others*, with the aim of eliminating "violence against women by reinforcing already existing legislation against deceit, coercion and child abuse" (Pheterson 1989, 12-13). This document takes an abolitionist approach in that it does not distinguish between conditions of force or free will, and labels all prostitution as violence against women.

Pheterson argues (1989, 13), however, that this document and the legislation it reinforces are problematic because they deny prostitutes' autonomy and contractual rights, as well as their right to work indoors in potentially warm, safe, clean conditions, and forces them to work in isolation. Because prostitutes' activities are defined as criminal, many are therefore forced to depend upon criminal men for protection from law enforcers; as a result, the "Convention effectively works to punish rather than protect women" (Pheterson 1989, 13).

Arguments of the "prostitution as oppression" perspective

The "prostitution as oppression" perspective explains the origin of prostitution as rooted in the structure of patriarchal society, which creates the conditions for women to be not only economically disadvantaged, but also socialized to believe that the only thing of value a woman possesses is her sexuality, which, along with her body, is turned into a commodity (Dworkin 1997, 142-143). This reduction of all women's selves and sexuality to sexed bodies to be used by men to fulfill their sexual needs works to subordinate, exploit, and violate all women's human rights to dignity and equality. In this sense, prostitution is criticized as "the fullest patriarchal reduction of woman to a sexed body" (Barry 1996, 22).

This view of woman's reduction to her sexuality as a patriarchal structure is influenced by what Chapkis (1997, 17) calls the anti-(heterosexual)-sex position, a sub-theory of radical feminism which proposes that female sexuality is a product of male domination, and that "sex itself must be abolished," because "the very meaning of sex is male domination." For "anti-(heterosexual)-sex" feminist theorists such as Dworkin, "woman is constituted as and through sex.

Thus, not only is sex synonymous with male supremacy and female objectification, but woman is synonymous with whore" (Chapkis 1997, 19).

Valverde (1985, 14) calls this position "sexual pessimism," and criticizes it as a form of biological determinism that confuses

men's social power – which is what gives the penis its threatening meaning – with physiological facts. Physiology does not in itself allow men to perform the complex social act of rape; it is rather a patriarchal social system which permits men to abuse women in various ways including rape... If one believes that something inherent in

men's physiology or psychology leads them to sexual violence, then pessimism is indeed the only rational response (Valverde 1985, 15).

Whether due to physiological or sociological factors, the "prostitution as oppression" perspective rejects the proposal that prostitution can be normalized as a form of work because it argues that prostitution cannot be separated from the power structures of society in which it takes place. This position posits that prostitution exists as an institution of patriarchal or male dominance, and even acts as the "institutional, economic, and sexual model for women's oppression" (Barry 1996, 24). As Barry notes (1996, 22), "sex, accessible to men through the female body, is a social product of culture, a political product of gender hierarchy, and these are the conditions of male power." For radical feminists, the idea that prostitution is an institution of male dominance and is located within this power hierarchy is evidenced by the fact that it is neither reversible (so that it is women who buy the services of prostitute men), nor does it possess intrinsic value as work outside of being an economic relation of power.

The first of these claims, that the prostitution contract is sexually irreversible, is taken up by radical feminists who address the question whether prostitution can ever provide equal opportunity for the provision of "services in which women and men are equally welcome, both as workers and as clients" (Overall 1992, 718). From the "prostitution as oppression" perspective, this is an impossible proposition, because the nature of prostitution is specifically gendered, so that sexual services are overwhelmingly provided for men and bought by men. Overall points out (1992, 719) that, in Western industrialized countries, "the fact that it is men and not women who buy prostitutes' services is not, surely, just for

women's lack of equal opportunity to do so"; instead, "prostitution is dependent both for its value and for its very existence upon the cultural construction of gender roles in terms of dominance and submission." In this way, Barry states (1996, 67) that prostitution is not reversible because sexual services are "not only the privilege of male domination, but the cause." Because these gender roles surrounding prostitution are the result of socialization, making prostitution reversible would require "changing women's sexual socialization so as to construct women to regard the purchasing of sexual services as attractive and desirable in the way that many men do" (Overall 1996, 720-721).

For the second claim, as to whether prostitution contains any intrinsic value as work, the answer from the "prostitution as oppression" perspective is, again, no. Pateman (1988, quoted in Overall 1992, 716) argues that "sex work" differs in a crucial way from other work performed in that "other forms of labour can and do also exist independently of any form of commercialization or exchange. Prostitution, by contrast, is defined in terms of buying and selling, or more generally, in terms of an asymmetrical relationship of exchange." Unlike other forms of labour that produce goods and services, "sex work" only exists as "work" when it takes place within the patriarchal context of gender inequality. That the male client can affirm his superior status over the female prostitute through the purchase of her sexed body is what gives value to "sex work". As such, it can be understood that "what is essential to prostitution is not sexual activity itself but the buying of sexual activity" (Overall 1992, 717) as a means of maintaining and reinforcing male supremacy and privilege. Pateman proposes

(1988, quoted in Overall 1992, 717) that this inherent asymmetry in the exchange in sex work provides the context for other forms of asymmetry that exist in the sex transaction, including inequalities related to class, age, race, and of course gender, in which the disadvantaged sell services to those who are more privileged.

For "prostitution as oppression" advocates, the main problem with prostitution is its location at "the intersection of capitalism and patriarchy" (Overall 1992, 720-721). For these feminists, the point of contention over prostitution does not lie in the sexual exchanges themselves, or in their material circumstances, but in the system of patriarchal capitalism in which they occur. Pateman points out (1988, 201) the incongruity between prostitution and other forms of labour by asking: if prostitution can be considered as just another form of labour in the capitalist system, why is it such a powerful criticism of capitalist labour to refer, as Marx does, to "the prostitution of an individual's labour"? She answers that "in arguments about economic coercion and exploitation the comparison is often turned round; instead of prostitutes being seen as exploited workers, workers are held to be in the same position as prostitutes." This implies, in Pateman's words (1988, 201-202), that

the prostitution contract is not merely one example of the employment contract; rather, the employment contract becomes a contract of prostitution... The fact that the prostitute seems to be such an obvious symbol of the degradation of wage labour, raises the suspicion that what she sells is not quite the same as the labour power contracted out by other workers.

Chapkis (1997, 56) interprets the view of all instances of prostitution (forced and voluntary) within the capitalist system as exploitative to indicate that, for radical feminists, "it is not the issue of coercion that interests [abolitionists], but rather the problem of *sex*... It is sexual *commerce*, not sexual *coercion* that is

a threat to human rights." It could be said that "prostitution as oppression" feminists oppose the commodification of sex because, in Radin's (1996, 133) words, they "do not wish to unleash market forces onto the shaping of our discourse regarding sexuality and hence onto our very conception of sexuality and our sexual feelings." Chapkis refers (1997, 13) to feminists who take this view as "sexual romanticists," in the sense that they are concerned with the connection between sex and love, and describes them as feminists attempting to free female sexuality from the distortions of patriarchy. Unlike anti-heterosexual-sex feminists or sexual pessimists, these feminists do not view female sexuality solely as a creation and reflection of patriarchal oppression, but see it as something that can be separated into its "positive" expression in acts of love and its "negative" expression in the eroticization of forms of violence against women such as pornography and prostitution. Chapkis summarizes (1997, 14) the perspective in this way:

When love, relationship and mutual pleasure are the only appropriate context for sex, cash and contract cannot substitute as evidence of reciprocity... From this perspective, the practice of prostitution is not really sex at all, but an abuse of sex. This misrepresentation sold as sex through prostitution and pornography endangers the possibility of real, positive sexual experience.

To support this interpretation of the "prostitution as oppression" position, Chapkis (1997, 15) recounts a plenary address by Barry at the Nordic Prostitution Conference in Helsinki in May 1995 in which Barry states that prostitution "has the effect of reducing sex to an object and reducing women to sex [which] objectifies sex into a thing to be gotten, had or taken, disengages sex from its human experience, its dimensionality and places it in a marketing condition whether in fact it is marketed or not."

"Prostitution as oppression" feminists oppose prostitution not only because of its theoretical implications, but also because of its effects on women in the trade, which, they argue, are ignored by feminists who endorse the "prostitution as work" perspective. The "prostitution as work" perspective asserts that prostitution can be viewed as "sexual labour," as prostitutes contract out their "sexual services" for a given period in exchange for money. Pateman (1998, 191) summarizes the argument in this way: because the prostitute, like any other worker, stands in an external relation to the property in her person, she can contract out use of her services without detriment to herself. "Prostitution as work" feminists propose that the objectification of emotion that occurs in "sex work" is not inherently destructive or harmful to the prostitute; instead, prostitutes and other women who perform "emotional labour" are able to summon and contain emotion within the commercial transaction, by erecting and maintaining boundaries that protect them from abuse, and thus developing a certain "professionalism" toward the job (Kempadoo 1998, 5).

The "prostitution as oppression" perspective, however, argues that the prostitution contract is unlike other employment contracts, for several reasons. Davidson points out (1998, 9) that the action of labour is "an inalienable property of the human individual": because labour cannot be separated from the person who performs it, we cannot say that it is only a set amount of labour that is exchanged, sold or surrendered, but the power to labour over an agreed period of time. In the case of prostitution, while using the "sex work" discourse suggests the exchange of sexual services for payment, it is better understood as "an

institution which allows certain powers of command over [a prostitute]'s body to be exercised by another" (Davidson 1998, 9). As Pateman states (1988, 207), "when a man enters into the prostitution contract he is not interested in sexually indifferent, disembodied services; he contracts to buy sexual use of a woman for a given period." Instead, "the men who enter into the prostitution contract have only one interest: the prostitute and her body... In prostitution, the body of the woman, and sexual access to that body, is the subject of the contract" (Pateman 1988, 203-204).

For some theorists, what differentiates prostitution from other forms of labour is the inseparability of sexual identities from the construction of the self. Pateman affirms (1988, 207) that the integral connection between bodily sexuality and the prostitute's sense of self means that she must distance herself from her sexual use, through the process of "dissociation." Some radical feminists argue that disengaging parts of the self as sexual commodities is destructive of women's humanity, as it segments and distorts the self. As Barry points out (1996, 32-33), "sex is an integral dimension of the human being, of the self. When it is treated as a thing to be taken, the human being is rendered into a thing, an objectification that not only violates human rights but also destroys human dignity." The distinction between the sale of labour and the sale of power over the body and thus the self is a vital one in the case of prostitution, where women's bodies are subjected to violence and abuse. Raphael quotes Hughes' assertion that "sexual trauma is unique from other forms of trauma. It is a violation of the most intimate

and personal aspect of the self. One's own body becomes the setting in which the atrocities are perpetrated" (Hughes 2000, 17, quoted in Raphael 2004, 196).

"Prostitution as work" advocates respond that the violations suffered by prostitutes are avoidable circumstances that "are neither unique nor essential to the practice of prostitution." Rather, it is imaginable that prostitution could always be practiced in "circumstances of relative safety, security, freedom, hygiene, and personal control" (Overall 1992, 716). Overall maintains (1992) that the focus on different material conditions for sex work is the source of some of the disagreement between radical feminists and prostitutes. She relates the accounts of some of the prostitutes at the 1985 Toronto conference.

Some prostitutes describe pleasant, clean, even luxurious surroundings for their work, well-mannered "clients", and a reasonable, civilized exchange of sex for money. Thus danger and injury are not essential elements of the labour, for sex work could still be done, and sometimes is, without them. Furthermore, they are not unique to sex work, for women can be and are subjected to disease, injury, and psychological abuse inflicted by men in offices, factories, and even their own homes (Overall 1992, 710-711).

Therefore, the "prostitution as work" perspective argues that dangerous and abusive working conditions are not an inherent component of prostitution, and can thus not be used as a reason to oppose it.

What should be done?

The "prostitution as oppression" perspective rejects the liberal/sex radical idea that it is possible for sex work to rid itself of its stigma and marginal status simply by becoming decriminalized or legalized. While the "prostitution as work" perspective implies that it is the criminal designation of prostitution that is most responsible for the stigma and the abuses suffered by prostitutes, advocates of the "prostitution as oppression" perspective disagree. They counter that

decriminalization would not alter the marginal status of prostitutes, but would instead benefit pimps and clients by increasing the availability of prostitution, without addressing the social and economic contexts that victimize women and force women into prostitution in the first place. As Raphael proposes (2004, 191),

it is hard to understand how decriminalization would bring about men's better treatment of the women in the sex trade. Their increased availability under legalization would not serve to remove their suitability as targets for aggression and, once prostitution was legitimized, violence against them would not magically cease, and might even increase.

Barry (1996, 31) is equally sceptical about the prospect of decriminalization reducing the harms of prostitution, stating that "normalizing the sexual exploitation of women will not make it less sexually exploitative, it will only make it more available."

"Prostitution as work" advocates claim that decriminalizing prostitution would neutralize the "negative status of prostitution by promoting legal and social acceptance of it" (Barry 1996, 72). For "prostitution as oppression" advocates, however, this is not a positive step. If prostitution were to become neutralized and normalized, Barry (1996, 72) argues, "then equal acceptance of every form of sexual objectification and dehumanization that goes under the overall designation of 'sex' will achieve the prostitution of sexuality," wherein women's sexuality would become a commodity to be bought and sold under a system of patriarchal capitalism.

As such, some advocates of the "prostitution as oppression" perspective have condemned governments that are in favour of legalizing and regulating prostitution or who have already done so, for what they claim are the dangerous implications of this decision. Jeffreys (2004), in her study of legalized

prostitution in Australia, argues that legalization does not alleviate the harms of prostitution, but creates new harms within a "culture of prostitution" wherein prostitution becomes normalized and buyers' actions are rendered acceptable. Shrage adds (1989, 356-357) that society's increasing tolerance for commercially available sex implies general acceptance of principles which perpetuate women's social subordination and assign women to marginal social roles in all our cultural institutions. Raymond (2003) argues that by legalizing prostitution, governments undermine the value of all women in society by defining what a woman is and what she is made for. She claims that

because any woman's body can be commodified and sold as sex in the marketplace, all women can be reduced to sexual objects and instruments. The degraded role into which prostituted women are cast sanctions the sexual exploitation of all women, eroticizes women's inequality, and thus bolsters women's personal and social subordination (Raymond 2003).

For this reason, radical feminists reject the claim of sex radical feminists and prostitutes who claim that engaging in prostitution challenges dominant patriarchal views about morality and the sexual, social and economic roles of women as dependent and submissive. The "prostitution as oppression" perspective argues that, rather than advancing women's sexual liberation, prostitutes are "actively engaged in promoting women's oppression ... It means that the sex that customers buy, which is an objectified sex that dehumanizes, is what a woman in prostitution promotes when she chooses it as her own identity" (Barry 1996, 71).

The two main perspectives presented in this section, while sharing the goal of improving the lives of prostitutes and advancing the status of all women in

society, appear diametrically opposed in many key ways. This is due to fundamental differences in the theoretical frameworks they adopt for understanding the nature of men and women's sexuality, patriarchy, commercial exchange, and their image of "the prostitute." While a vibrant debate with a diversity of perspectives is a vital requirement for addressing prostitution and its related problems, it is troubling that, instead of focusing on the root causes of gender inequality and the violation of women's labour and sexual rights, the debate surrounding prostitution is increasingly promoting discord between feminist camps, who see each other as responsible, on one side, for the continued victimization and stigmatization of women in prostitution (Audet 2005), and, on the other, for perpetuating a system of values which legitimates women's social subordination (Shrage 1989, 352). Overall (1992, 707) refers to this division among liberal feminists, prostitutes, and radical feminists as "another case of patriarchal divide and conquer," as it "functions effectively to keep women arguing with each other rather than with those who perpetuate and benefit from the practice." This is clearly not a helpful strategy for resolving the debate.

A large part of the discord between feminists on the issue of prostitution stems from the ways in which the "prostitution as work" and "prostitution as oppression" approaches utilize stereotypical and essentialized images of "the prostitute"—the autonomous, empowered sex worker in one case, and the exploited, victimized sex object in the other. This becomes problematic because no such stereotypes may stand in for the full spectrum of women's experiences in prostitution. Because each woman who becomes a prostitute is an individual with

a unique story, there can be no universal experience of prostitution, and thus no single explanation of why women prostitute themselves, what they gain or lose by doing so, or the extent to which they exercise their "choice" to engage in prostitution. Jeness (1993, 81-82) summarizes her view:

Relying upon an image of prostitution as voluntarily chosen service work, [prostitutes' rights advocates] pressed claims about prostitutes' civil rights as workers who are wrongly prohibited from participating in sex for sale as a line of service work – nothing more, and nothing less. At the same time, and consistent with larger concerns about violence against women, analyses emanating from [radical] feminism suggested that prostitution is neither work nor a voluntarily chosen activity. Rather, it is institutionalized forced sexual slavery resulting from patriarchal structures – nothing more and nothing less. The nothing more and nothing less implicit in each of these perspectives constituted the core tensions between [prostitutes' rights] representatives and [radical] feminist prostitutes' advocates.

As a result, neither approach is adequate to explain the diversity of prostitutes' experiences, and this shortcoming has implications for the formulation of policies to address prostitution in different countries. By essentializing the experience of "the prostitute," policymakers problematize prostitution in specific ways that determine the goals of policy. The next chapter will present three case studies of the construction of prostitution as a policy problem.

Chapter Two: Prostitution Policy Approaches and Case Studies

The difficult task of translating the various theoretical approaches to prostitution into policies designed to deal with prostitution is a responsibility faced by state and local governments in every country. According to Outshoorn (2004b, 6), governments at all levels have attempted to control prostitution longer than it has been identified as an important feminist issue. For state governments, the definition of the "problem" of prostitution determines the goal of policy and action: whether it be to maintain law and order, preserve morals, minimize the level of "public nuisance," or protect women from exploitation.

At the most basic level, the laws and policies that state and local governments employ to address prostitution are a reflection of their society's "underlying ideology about the moral (un)acceptability of paid sex" (Brants 1998, 622), that is, whether prostitution is an acceptable form of work, an immoral practice for both prostitutes and clients, or a form of violence against women. According to Chapkis (1997, 131),

those who view prostitution as an inherently abusive practice generally support prohibition of the act and punishment of some or all parties involved. In contrast, those who view prostitution as a form of labor tend to advocate policies designed to enhance worker control through decriminalization, regulation, and worker self-organizing.

The main focus of government efforts involves the use of legal and regulatory systems to deal with prostitution and its associated activities, as these measures correspond with the way many Western industrialized states construct their roles in relation to the "problem" of prostitution. This chapter focuses on the various aspects and applications of prostitution policy. It begins by defining some of the terminology of prostitution policy and presenting an overview of the policy

approaches most commonly found in Western industrialized countries. The following subsections then compare and contrast three countries that take distinctly different policy approaches to prostitution:

- 1) the Netherlands, where regulation and legalization provide a liberal/sex radical feminist "pragmatic" approach;
- 2) Sweden, where the criminalization of the brothel owners, pimps, and buyers, and the decriminalization of women who are victims of prostitution provides an abolitionist response, and;
- 3) Canada, where the framing of prostitution as a matter of "public nuisance" calls for the policy of indirect prohibition through the criminalization of many of the activities associated with prostitution.

The purpose of this section is to illustrate the ways in which different feminist theories of prostitution have been interpreted and translated into practice through different policy approaches.

To focus the case studies on the issues of feminist debate introduced in the first chapter, a set of questions guide the discussion of prostitution policy in the three countries selected for review. Each of the case studies discussed in this section attempt to answer the following questions: How is the issue of prostitution framed by feminists and wider society in each case, and how do these discourses shape public policy? What are seen to be the causes and the harms of prostitution, and who do these affect? Whose voices are heard in the prostitution policy debate, and whose are silenced? What are the objectives of prostitution policy, and at whom are they targeted? How has the implementation of these policies

been undertaken, and what have been the consequences (positive and negative) of prostitution policies on different groups, including clients, brothel owners, pimps, different groups of prostitutes, and ordinary citizens?

The evidence reviewed in this section informs the discussion in the third chapter and conclusion, which focus on analytical questions: What do the successes and failures of these policies tell us about the assumptions inherent in the different feminist theoretical approaches? And, in light of the findings, what sort of approach and policy objectives should be prioritized in dealing with prostitution? This discussion aims to bring to light some ideas that may allow us to formulate an effective feminist prostitution policy that confronts systems of gender and other forms of inequality, while also taking into account the needs and agency of prostitutes themselves, and allowing for the possibility of challenging Western society's conventions that restrict women's freedom.

2.1 Overview of policy approaches to prostitution

As mentioned above, prostitution policy in Western industrialized countries most often adopts legal instruments as its primary policy instruments. This tendency can be traced to the way governments have problematized prostitution and have constructed their role in relation to prostitution and other social "problems" (this will be discussed further in the context of each country). The differential use of legal instruments by state governments allows us to identify different policy approaches, depending on which parties or activities are criminalized, and under what circumstances. This sub-section identifies four general legal approaches into which prostitution policies can be classified:

legalization, decriminalization, prohibition and abolition. It must be noted that there is a great deal of overlap among these categories, and a certain degree of variation in understanding and interchangeable use of these terms (legalization and decriminalization, prohibition and abolition); therefore, in order to study these approaches, it is necessary to establish specific meanings related to their theoretical bases and policy aims.

Decriminalization and Legalization

As the name suggests, the legal approach of *decriminalization* involves removing the criminal classification of an act or related activities (Flowers 1998, 153), in this case, the provision of sexual services in exchange for money or other material gain. This may include the repeal of all prostitution-related statutes or of select statutes in certain communities or regions (Flowers 1998, 154). To some, decriminalization implies a complete relinquishing by the state of attempts to control prostitution; however, this description is not completely accurate. While decriminalization does include the removal of criminal penalties for prostitution-related activities (Hughes 2005, 38) and the repeal of all laws against prostitution, it also describes a system of control in which prostitution is governed by laws relating to business, public order, violence, abuse and exploitation (Visser et al. 2004, 244), blurring the line between decriminalization and legalization.

Instead of categorizing the decriminalization of prostitution as a legal regime unto itself, scholars such as Hughes (2005, 38) propose that it is best understood as a means rather than an end. For example, decriminalization of all aspects of prostitution can be the first step toward regulation and thus legalization,

while selective decriminalization of prostitutes can be part of an abolitionist approach. Thus, decriminalization is best understood as a transition phase or part of the process towards either legalization or abolition, but is not an end point in itself.

Decriminalization is favoured by policymakers in some countries for its non-committal aspects, and by many prostitute activist groups for the implication that it provides greater freedom for prostitutes. However, decriminalization is criticized by those who believe the "tolerant" approach to the sex industry it implies is inadequate to deal with practical and moral issues such as the apparent threat to public order presented by organized crime and its role in trafficking women. Critics fear that decriminalization creates an atmosphere that fosters the growth of the industry and its increasing visibility, and reduces the urgency of addressing the occupational health and safety of sex workers (Visser et al. 2004, 245). This concern is amplified in the case of legalization.

The *legalization* (or *regulation*) approach is often understood as the next step following comprehensive decriminalization of prostitution. Legalization involves setting up regulations that control when, where, and under what circumstances individuals may engage in prostitution, and prostitution is illegal only if these regulations are violated (Hughes 2005, 37). These government regulations may include licensing and registration requirements (West 2000, 106), zoning regulations allowing brothels or red light zones (Outshoorn 2004b, 8), registers of prostitutes working legally in those places (Visser et al. 2004, 244), and statutory laws mandating everything from labour and safety practices and

principles, to mandatory health checks of prostitutes for sexually transmitted diseases such as HIV/AIDS (Flowers 1998, 154). There is also the expectation that the state will collect tax revenue from the industry and income earners (Hughes 2005, 37).

By some definitions, legalization describes not only a specific set of policies and laws of state intervention in prostitution, but also an implicit ideological shift toward moral acceptance of the activity by state and society, as prostitution becomes redefined as a form of service work, as "sexual services" (Hughes 2005, 37), a step which radical feminists strongly oppose, as discussed in the previous chapter. When a state moves toward legalization policies, the change in legal structure is understood to be accompanied by shifting state and societal attitudes "wherein prostitution would essentially become a business in the eyes of the government like any other lawful enterprise that government regulates in some form or manner" (Flowers 1998, 154). Under legalization, prostitution is seen as regular labour, governed by market forces, subject only to such rules as derive from labour law and other statutes that would be applicable to any other legitimate business enterprise (Brants 1998, 622).⁵

Brants suggests (1998, 622-623), however, that legalization policies need not imply the legitimating of prostitution. She differentiates between *legalization* and *regulation*, stating that legalization implies a moral acceptance lacking in

⁵ It should be noted that debates surrounding legalization or decriminalization policies are careful to specify that the prostitution of children, or the forced prostitution of anyone, would remain prohibited because of morality issues of exploitation. However, Flowers (1998, 154) points out that these issues would still have to be dealt with if other forms of prostitution were decriminalized or legalized, as these could potentially increase the demand for illegal forced or child prostitutes.

regulationism. She claims the regulationist approach involves accepting the existence of prostitution and keeping it under control, but not approving of it or regarding it as legitimate. However, it is unclear what the difference would be in practice.

Legalization is often considered a "pro-prostitution" policy option, advocated by prostitution activists, as it aims to benefit sex workers and the industry. Some have argued, however, that by accepting prostitution as a social fact and strictly regulating it by law, policymakers aim not at protecting prostitutes, but at protecting the buyers of prostitutes and the general public from any adverse effects, including negative effects on public order and public health (Brants 1998, 622). Chapkis' (1997) research supports this assertion, stating that sex workers' resistance to state policies of regulation reflects the fact that where such measures have been implemented, they have advanced the interests of clients and neighbourhood residents, assisted in state surveillance of "deviant" populations, and ensured greater state control over sexual commerce, rather than protecting the rights and interests of prostitutes themselves (Chapkis 1997, 155). As such, Shrage points out (1994, 83) that feminists oppose legalization and regulation from both ends of the spectrum – radical feminists on the grounds that "social regulation institutionalizes inequality," and liberal/sex radical feminists on the grounds that "such systems are primarily used not to protect the prostitute, but to limit her rights."

Chapkis states (1997, 156) that in cases where prostitution is regulated, authorities often attempt to maintain control over the sex trade through

registration of prostitutes. This strategy has not been successful, as most prostitutes are unwilling to be registered as the stigma can negatively affect their mobility, future employment options, and social status. In addition, some of the most vulnerable women in prostitution, including drug addicted women, underage prostitutes, and migrants, are ineligible to be registered. As a result, these women would remain outside the legal system. Chapkis argues (1997, 159) further that the formal licensing of prostitutes, a strategy proposed by feminists such as Shrage,⁶ as a way of assisting in the "professionalization" and destigmatization of the women in the sex trade, faces the problem that the training and licensing procedures required to gain a licence would be inaccessible for women with limited educational and economic resources. This would create a two-tier system of prostitutes dividing those who are licensed and thus legal and those who are not, in much the same way registration would. Furthermore, licensing shares with registration the problem of publicly identifying women as prostitutes (Chapkis 1997, 159).

From this discussion it appears that legalization and decriminalization do not fall into such simple discrete categories as they may be portrayed in some discussions. Brannigan explains (1993, 9) the illusory nature of the distinction between legalization and decriminalization:

it is difficult to credit the distinction between decriminalization and legalization... If the laws with respect to brothels were removed from the criminal code, *by default* all the usual laws that are associated with businesses would apply. These would not be 'un-monitored' underground rackets operating outside the law, and if they were, why would they not justifiably attract the attention of [taxation authorities]? Decriminalization

⁶ Shrage (1994, 159) describes a process of licensing prostitutes that involves developing their professional skills by completing courses in human sexuality from the perspectives of biology, psychology, history, and medicine, in order to enhance their resource base and reduce their ill-treatment and outcast status.

cannot escape regulation. Businesses created by decriminalization would have to make decisions about siting, building codes, recruitment, advertising, labour standards, etc.
[emphasis in original]

Flowers (1998, 54) agrees that whenever prostitution is decriminalized, it almost certainly as a consequence becomes at least partially regulated by the government. Regulation of prostitution resulting from decriminalization thus implies the legalization of prostitution, because government cannot regulate an illegal activity.

Neither do the decriminalization and legalization legal regimes correspond to clearly differentiated sets of policy options. For example, even when policymakers choose an approach, they are still left to work out the details and application of laws and policies, such as whether they should require prostitutes to work out of legally regulated brothels, or whether they should be allowed to work independently, whether or not they should require a license, and whether some aspects of the profession should be subject to regulations while others remain illegal (Flowers 1998, 154); as such there can never be an "ideal type" of either of these approaches in practice.

Abolition and Prohibition

Contrasted with decriminalization and legalization are the abolition and prohibition approaches. While these latter two approaches share the goal of eliminating prostitution, they are underpinned by different understandings about the causes, nature and harms of prostitution. Under an *abolitionist* approach, the aim of all laws and policies is to eradicate prostitution by criminalizing all third parties profiting financially from prostitution, with the exception of the prostitutes

themselves (Outshoorn 2004a, 165, 2004b, 8). The assumption behind the abolitionist approach is that the prostitute is not a criminal, but the victim of criminal exploitation (Brants 1998, 622). Proponents of this approach may have different reasons for wishing to eradicate prostitution: they may view it as harmful to all women and children (Hughes 2005, 37), morally reprehensible (Brants 1998, 622), and oppressive to prostitutes (Visser et al. 2004, 244).

Under the abolitionist approach, the differential treatment of the parties to the prostitution transaction is based on a distinction between victims and perpetrators. Women in prostitution are considered victims and offered help in re-integrating into mainstream society (Visser et al. 2004, 244); the clients, pimps, brothel keepers and traffickers are viewed as exploiting women, and are thus all criminalized (Hughes 2005, 37-38). A further implication of this perspective, therefore, is that the state can neither accept money from prostitution nor regulate the keeping of brothels, as this would place it in the role of exploiting women. Instead, it is argued that the state should limit its activities to clamping down on exploitation, maintaining public order, and rehabilitating, not punishing, prostitutes (Brants 1998, 622).

The abolitionist approach also takes into account what radical feminists view as a link between prostitution and sex trafficking. It is understood that the trafficking of women for sexual purposes is driven by the demand created by the social acceptance of prostitution. Therefore, efforts to stop trafficking must include eliminating, not condoning, prostitution as a root cause. The abolitionist approach makes it a crime to transport a person across state lines for purposes of

prostitution, even if the victim consents, as this approach views women who are trafficked as victims by definition (Hughes 2005, 37-38).

Under a system of *prohibition*, on the other hand, all aspects of prostitution are illegal and all parties are liable to penalties, including (and, in practice, especially) the prostitute (Outshoorn 2004b, 8). Prostitution is defined as criminal activity, and all activities relating to prostitution are criminalized, including soliciting, procuring, pimping, and brothel-keeping. All persons engaged in these activities are considered criminals. Unlike the abolitionist approach, no distinction is made between those who sell sex, those who buy sex, those who facilitate the buying and selling or who manage establishments where prostitution takes place (Hughes 2005, 37). In the prohibitionist view, prostitution is seen as an activity that is both immoral and criminal. This view is found in societies that are highly concerned with public morality and that rely heavily on the criminal law as a solution for social and moral problems (Brants 1998, 622).

While in practice prohibition has proven costly and ineffective in eliminating prostitution, it continues to receive support from enforcement officials and policymakers because, while criminalization of prostitution may not abolish the practice, it serves an ideological function of denouncing prostitution and related activities, and in doing so, may create a public perception of law and order (Chapkis 1997, 132-133). Feminists and prostitution advocates, however, criticize prohibitionist policies for having a detrimental effect on the very population they are ostensibly aimed at protecting: prostitutes.

Prostitution researchers have found that efforts to protect prostitutes by abolishing their places of work or by arresting them and their clients do not work to enhance their general safety or well-being. As a result, in the eyes of most prostitutes, the police are not seen as a resource upon which to draw to protect them from abuse and exploitation, but instead as a problem to be avoided. Chapkis (1997, 133) argues that fear of arrest encourages hasty and euphemistic negotiations between prostitutes and clients which can undermine a worker's authority and her ability to protect herself. As well, laws against "pandering" complicate workers' efforts to share crucial information about safer working methods and dangerous clients, or to educate each other or the public about their work in a manner which differs from its usual negative connotation (Chapkis 1997, 133).

In principle, the different policy approaches to prostitution appear distinct but, in practice, they can be hard to tell apart. West discusses (2000, 106) the difficulty of considering prostitution policy approaches as relatively discrete. She notes that characterizing legal regimes according to "ideal typical" categories is increasingly inappropriate as a description of current developments, for many reasons. For one, government prostitution policies are far from internally homogenous and may include elements from more than one regulatory framework. As well, there is movement between each regime, reflecting the political influence of competing discourses and organized interests. Another factor is the differential effects of legal regimes within the sex industry, for example, on street prostitutes, brothel and massage parlour workers, and

prostitutes who work out of their own home, as each type of prostitution brings different challenges that cannot all be addressed by a single policy approach. Finally, there are discrepancies between the laws and policies on the one side, and everyday enforcement practices on the other, and it is through the interplay between the one and the other that the practice of prostitution is shaped today (Visser et al. 2004, 245).

2.2 Prostitution policy case studies

The following subsections outline three case studies that broadly illustrate three contrasting policy approaches to prostitution. The first subsection looks at the Netherlands, where prostitution underwent decriminalization, followed by legalization and regulation. The second examines the case of Sweden, where policymakers take an abolitionist approach that aims to eliminate prostitution by decriminalizing prostitutes and criminalizing all other parties, including brothel owners, pimps, and, notably, clients. The third case examined is Canada, where prostitution policy is guided by a prohibitionist approach, although it operates indirectly by criminalizing the activities associated with prostitution, including soliciting, living off the avails, and keeping a bawdy house, but not the prostitution transaction itself. The aim of this discussion is to illustrate the different prostitution policy approaches in practice, and their impacts on the various groups affected by the practice of prostitution, mainly prostitutes themselves.

The Netherlands

Historically, the Netherlands has undertaken diverse policy approaches to prostitution. Overall, it has long been accepted as a part of life in the Netherlands, as brothels and toleration zones have been openly and tacitly condoned (Kilvington et al. 2001, 81) at various times. In the 19th century, the Netherlands adopted a regulatory regime, which allowed for brothels and medical control of prostitutes. Following concerted efforts by feminist and religious groups in the early 20th century, however, it shifted to an abolitionist position (Outshoorn 2004b, 191) that included a ban on brothels. From 1911 until the late 20th century, there was a gradual relaxation in implementation, which meant that, in practice, prostitution policy unofficially reverted to regulation.

During this time, a tension developed between national law and local policy, creating a complicated system that was difficult to administer. As the Dutch sex industry boomed in the 1960's and 1970's, local councils were bombarded with neighbourhood protests demanding the activities be contained or relocated. Attempts to contravene the brothel ban (for example the proposed "Eros Centre" aimed at centralizing the sex industry in Rotterdam) were struck down by the courts, on the grounds that "one cannot regulate what is forbidden" (Outshoorn 2004a, 167). According to Brants (2003, 629), groups campaigned for a lift on the brothel ban claiming "it is impossible to take all of the necessary steps to bring the excesses of prostitution under control, unless it is removed from the sphere of illegality entirely and subject to strict licensing regulations." In 1983, at the urging of local structures such as the powerful Association of Dutch

Municipalities, a bill was put forward to change the law and lift the ban so that city authorities would be given the appropriate administrative tools to regulate prostitution (Kilvington et al. 2001, 81). This was the first of several unsuccessful attempts to lift the ban, due in large part to the presence in the Dutch parliament of the Christian Democrats and other parties that opposed prostitution on moral grounds.

The administrative necessity of legalizing brothels developed alongside a general mood of liberalization (also seen in relation to drugs and euthanasia policies), in which prostitution was increasingly seen as legitimate work (Kilvington et al. 2001, 81). While earlier attempts at lifting the brothel ban had failed, the political climate of the 1990's was favourable, as during that time, criminal activities that were supposedly associated with illegal prostitution, such as rising crime rates, organized crime, and illegal immigration, kept the push to lift the ban on brothels on the political agenda (Outshoorn 2004a, 171). Following the 1994 national elections, the Christian Democrats were excluded from the ruling coalition for the first time since 1917, and in 1997, the cabinet of the "Purple Coalition" tabled a draft bill to lift the ban on brothels. The bill promised a "realistic approach without moralism," limiting the role of the state to reducing the exploitation of women in prostitution, by controlling and regulating the conditions under which it takes place, and eliminating forced prostitution (Outshoorn 2004a, 171). At a basic level, the bill had two aims: first, to legalize the organization of voluntary prostitution; second, to increase the penalties against

those involved in the organization of involuntary prostitution (Kilvington et al. 2001, 82).

The bill to abolish the general ban on brothels (a category which also included sex clubs, windows and other businesses which are run for the purposes of prostitution) and to legalize voluntary prostitution was passed in October 1999, and the law came into effect on July 1, 2000. The legislation sets out a clear and coherent prostitution policy, but it is the local authorities that control and regulate the conditions under which sex work is permitted. Specific conditions include the size of brothels and their location, health and safety regulations, and the status of sex workers (protection of mental and physical integrity, and preventing workers who are underage or without a residence permit) (Kilvington et al. 2001, 82).

Outshoorn describes (2004a, 165) the situation:

Prostitutes are entitled to social insurance and can unionise if employed; they also have to pay taxes. Sex employers have to observe labour law, health and safety regulations, and pay social insurance and taxes. Brothels are permitted within certain areas and have to comply with local regulations; pimping is no longer a criminal offence.

By regulating the commercial operation of prostitution in the same way as other businesses, it was hoped that the stigma of prostitution (now understood as "sex work") could also be addressed and gradually removed so prostitution could come to be seen like any other business (Kilvington et al. 2001, 82). This is consistent with the "prostitution as work" position, according to which prostitution is inevitable and not inherently oppressive, and therefore the best way to address it is to normalize it through regulation and integration into the legitimate economy. According to Outshoorn (1998, 191), the recent position of the Dutch government has been to accept prostitution as a fact of life, and to aim

to protect any persons from being prostituted against their will. The cornerstone of the legal approach in Dutch prostitution policy is thus to adopt the "prostitution as work" perspective's distinction drawn between "voluntary" and "forced" prostitution (Outshoorn 2001, 474), under which laws are instituted to protect women from forced prostitution, while allowing them the choice of engaging in voluntary prostitution. This stands in contrast with the "prostitution as oppression" approaches that reject the idea that engaging in prostitution could ever be a freely made choice.

This distinction was, however, in accordance with Dutch feminist theorizing, which asserted that prostitution could be a form of violence and a reflection of gender inequality between men and women, but at the same time accepted that women could "choose" to do it as work, and that it was the "whore" stigma that was the main problem for prostitutes (Outshoorn 1998, 194). This position, it was felt, was crucial to adopt in order to uphold women's right to sexual self-determination (Outshoorn 2001, 475). Dutch feminists were strongly in favour of lifting the brothel ban; even feminists who identified with the "prostitution as oppression" discourse did not advocate abolition. Instead, feminists recognized that anti-prostitution laws have proven ineffective, and that the best way to counter the victimization of prostitute women would be to empower them, by protecting their legal, social, and economic status (Outshoorn 2001, 476).

The debate surrounding the development of prostitution policy in the Netherlands was shaped by particular features of the Dutch policy environment.

One of these features is the strength of the women's movement in the Netherlands in the 1970's, which was successful in focusing attention on the issue of prostitution in the early 1980's, along with numerous other feminist topics relating to sexual violence against women, including rape, pornography, incest, and sexual harassment (Outshoorn 1998, 194). The Dutch women's movement was notable in that it had direct access to policymaking through the establishment of a women's policy agency within the national bureaucracy, the Department for the Coordination of Equality Policy (*Directie Coordinatie Emancipatie*), with strong participation from what were referred to as "femocrats": politicians and bureaucrats with strong ties to the women's movement.

Although the "femocrats" employed much of the discourse of the "prostitution as oppression" view, they eventually, through discussions with liberal/sex radical feminist activists and prostitutes, were convinced that lifting the brothel ban would be the best way to improve the position of prostitutes. Outshoorn explains (2001, 474) that this is because "in the end most actors came to agree that making prostitution 'work' provided the best chance of combating what they considered to be the undesirable side effects accompanying prostitution, which were held to be not inherent to the phenomenon itself." Thus the "prostitution as work" framing replaced "prostitution as oppression," the latter of which, according to Outshoorn (2004a, 168), "had turned women into powerless victims on whose behalf feminists were supposed to be acting," and instead created "a space for self-assured sex workers who would be able to fight for their own rights." Rather than applying the "prostitution as oppression"

perspective to all cases, as radical feminists did, this perspective was used only in relation to victims of trafficking or those in "forced" prostitution. Policymakers drew on the "prostitution as work" discourse when discussing voluntary prostitution, in which "prostitution becomes a sexual service or sex work, a profession a woman can enter out of free will" (Outshoorn 2001, 477).

Another feature that shaped the development of Dutch prostitution policy was the particular style of political debate and decision-making that characterized the policy environment in the Netherlands. According to Outshoorn (1998, 195), the liberal/sex radical "prostitution as work" perspective on prostitution in the Netherlands came to be adopted, "partly out of conviction, partly because it went along well with the pragmatic policy style prevalent in the Netherlands," which she describes as an approach used "when tackling moral or, more precisely, social-regulatory issues on which there is no consensus on values" (Outshoorn 2001, 478). Policy is developed in the Netherlands through what Outshoorn (2004a, 165) refers to as "polder politics," defined as "the specific type of corporatism prevalent in the Netherlands, where all interested parties sit round the table to achieve consensus and compromise about policy in an certain area."

The concept of pragmatism in Dutch policymaking shows us that, while legalizing prostitution and its associated activities does open the door for a normalization of prostitution and for the improvement of the position of those working in the sex trade, it does not necessarily mean that prostitution is massively condoned or supported within the general population. Instead, the government has argued that it takes a morally neutral stance: it does not seek to

promote the sex trade, but merely to empower those in potentially vulnerable positions employed in it (Pakes 2003, 224). This is reflected in Brants' (1998, 625) differentiation between regulated tolerance and legalization:

Regulated tolerance can be a means of achieving political compromise... whereas legalization requires a potentially divisive political decision by the legislature on what may well be a controversial matter. There is a tendency in the Netherlands to use this option in matters of morality and personal autonomy on which no political consensus can be reached.

The legalization of brothels in the Netherlands can be seen as a prime example of the pragmatic approach to moral issues in the Netherlands, an approach that reflects the "open and cosmopolitan character of Dutch society" (Outshoorn 2004a, 174). Some of the factors that account for this character are a comparatively high degree of wealth, an early-urbanized society, a seafaring and commercial history with a regular influx of migrants, and the absence of a dominant elite. According to Outshoorn (2004a, 174), such factors have

led to a tolerant approach to issues touching on different moral values, with a series of strategies to accommodate conflicts arising from this diversity. This can range from condoning deviant behaviour, delaying policy action as long as possible, depoliticizing moral issues by redefining them as technical matters for experts to solve, to coming up with procedural, not substantive, solutions.

Pakes (2003, 226) adds to the list of factors contributing to the pragmatic approach: a high level of social security, a rejection of a harsh role for the state following Nazi occupation, a low crime rate, and a high level of social cohesion. He claims that these factors have led to "a climate in which rehabilitation, social care and damage limitation were prime considerations in social and criminal policy" (Pakes 2003, 226), and a society in which groups achieve consensus through cooperation and compromise.

Pakes (2003, 226) observes that Dutch legislation on issues such as prostitution "is often aimed at giving existing practices a legal footing, with the subsequent aim of gaining control over such practices by means of guidelines, licences and other forms of regulation." Brants (1998, 624) provides an examination of how this nuance of Dutch policymaking occurs, through a practice called *gedogen*. Translated as "pragmatic tolerance," *gedogen* is a subtle means of social control that involves the public prosecutor's use of discretionary power to refrain from prosecution of certain criminal offences. In this way, the Dutch political system tends to develop informal systems of hierarchical guidelines and unwritten rules on controversial issues, allowing them to be eventually elevated to proper legal status. Brants notes, however, that the notion of "pragmatic tolerance" does not mean that criminal offences are simply ignored. Nor does the word "tolerance" imply downright approval, in Brants' words (1998, 624):

The emphasis lies on pragmatism which, to a large extent has its roots in a certain scepticism with regard to the criminal law as an effective solution to social problems. Contrary to what outsiders commonly believe, Holland is not so much a tolerant as a disciplined and above all consensual society, in which regulation is regarded as most effectively achieved if the adverse effects of criminal justice can be avoided. But regulation there most certainly is, and *gedogen* is perhaps best translated as 'regulated tolerance': it involves self-regulation, enforced if necessary through administrative rules, but always with the criminal law as a threat in the background.

She describes regulated tolerance, in simpler terms, as "a proven means of gently coercing people into doing things that the authorities want done, but at the same time allowing them to go about their business without too much hassle" (Brants 1998, 634).

Brants criticizes (1998, 634) the notion of regulated tolerance ("the iron fist in the velvet glove") as it applies to prostitution, however, on the grounds that it assumes for its proper functioning a state of social and economic equality of all

groups. She states that the system of regulated tolerance is flawed because, first, "it disregards the fact that one has to be in a position to accept the rules (and modify their effect through bargaining) and that this depends on social and economic power," and, second, "while it provides the means to discipline those who will not accept the rules, its effects are harshest on those who are unable to do so, therefore the least powerful" – in the case of prostitution in the Netherlands, these are "the drug addicts, the illegal immigrants, and in general those at the bottom of the social and economic ladder" (Brants 1998, 634-635).

It must therefore be asked, how have the Netherlands' policies regarding prostitution affected the practice of prostitution in the Netherlands? Kilvington et al. point out (2001, 82) that the new law has allowed for a great deal of collaborative effort between agencies such as local authorities, police, and health and social services, in working for harm minimization in consultation with sex workers. They have brought in reforms that have met some (but by no means all) of the demands of sex worker organizations for the right to work, as adults, through choice, and in reasonable conditions. As a result, the situation has improved for certain groups of sex workers; those working within the new legal framework have benefited in terms of the implementation of health and safety regulations, the acquisition of full social, legal, and employment rights, and greater access to health and other mainstream services. As well, the new system of regulation in the Netherlands may enable the beginning of the destigmatization and the normalization of some forms of sex work, allowing prostitutes to operate visibly and become part of public life (Kilvington et al. 2001, 84).

While legalizing prostitution in the Netherlands has created better conditions for Dutch prostitutes who are able to gain legal status, it has also resulted in a worse situation for unlicensed and migrant prostitutes. Some sex workers choose not to register their employment, and many simply cannot because they are not eligible: they may be under age, use drugs illegally or work as illegal migrants. It is estimated that approximately 50 percent of the 25,000 to 30,000 prostitutes in the Netherlands are not European Union nationals (Altink 1995, 45, Kilvington et al. 2001, 86). These account for a significant proportion of sex workers in the Netherlands who are likely to be excluded by the new system. Migrant prostitutes in this situation may then be adversely affected by the new legislation insofar as they have had to move underground and become effectively invisible to the authorities in order to avoid being deported (Kilvington et al. 2001, 86).

As migrant prostitutes are driven underground, they become even more at risk from abuse and exploitation (Brants 1998, 634), and increasingly likely to experience considerably worse living and working conditions. As Altink states (1995, 44), "while women who have legal status in the Netherlands vote with their feet and find another brothel or quit prostitution, brothel-keepers can easily exploit illegal immigrants, trafficked or not, who are under pressure to earn money for their families." A report by Europap (1998-2000) states that the Netherlands' system of regulation may also hinder health promotion and other service provision in some sectors of the industry where unlicensed and migrant prostitutes lack legal status, and are therefore excluded from the entire welfare

system. In addition, it is noted, the health system is rarely appropriate, as those who administer service are often said to have a negative attitude towards prostitution, which discourages women from using these services. Many prostitutes would prefer to have treatment without having to provide official documentation, because they fear that doctors will inform other state agencies about their status as illegal migrants. In this way, a two-tier system is being created with a legal sector, in which workers may win the same employment, civil and other rights as all other nationals of the European Union, and an illegal sector, in which workers are excluded from civil society and have few rights to health care, social benefits or protection at work, and little recourse to the law should they suffer abuse (Kilvington et al. 2001, 86).

Further criticisms are levelled against the policy of legalization for its effect of increasing the trafficking of women to work in prostitution in the Netherlands. While estimates of the number of victims of trafficking are difficult to obtain due to the underground nature of trafficking and the confusion over what constitutes trafficking, one estimate points to about 3,500 victims of trafficking in the Netherlands in 2000, the majority of whom were from Eastern Europe (Outshoorn 2004a, 166). Malarek (2003, 203) traces a connection between the Dutch policy of legalization and an increase in the trafficking of women from Eastern and Central Europe, finding that "traffickers in the Netherlands controlled more than half the women in prostitution and that very few Dutch women were in the brothels." This is because legalized prostitution makes it extremely difficult to hold traffickers and pimps accountable for their activities, as they manage to

avoid prosecution by claiming that the women consented. As such it is difficult to establish a line between voluntary and forced prostitution (Malarek 2003, 203-204).

According to Outshoorn (1998, 196), many of the problems with addressing trafficking in the Netherlands lie with the police, who are neither much informed about trafficking, nor very active in tracing it. Local police forces often lack the knowledge and resources, and communication between them and national criminal investigation agencies was inadequate. As well, victims of trafficking face obstacles as they lacked passports, do not speak the language, often do not trust the police, and face deportation if they come forward (Outshoorn 1998, 196). As well, Malarek argues (2003, 203-204) that legalization allows police to simply ignore the burgeoning brothel industry.

This case study has shown that prostitution policy in the Netherlands is informed by the liberal/sex radical feminist "prostitution as work" discourse, which coincides with traditional Dutch policymaking styles of "regulated tolerance." These discourses rely on an image of "the prostitute" as a socially and economically empowered and autonomous woman, and view prostitution as a practice which is not in and of itself harmful to women, but whose harms may be reduced through decriminalization and regulation. The Dutch case also shares with these perspectives the distinction between forced and voluntary prostitution, although this has become problematic, as some critics have argued that the stigma of prostitution and the patriarchal values that underlie Dutch culture allow police to ignore harms perpetrated against prostitutes.

Sweden

In Sweden, prostitution policy adopts a strongly abolitionist approach. Swedish prostitution law criminalizes the brothel owners, the pimps and the clients who are seen as exploiting prostitutes, and decriminalizes the activities of the prostitutes themselves who are seen as victims of male violence. The focus on women as victims is further emphasized by government-pledged money and assistance to prostituted women, aimed at assisting women in leaving prostitution, and for providing women with access to shelters, counselling, education, and job training (Ekberg 2004, 1192).

The Swedish Law that Prohibits the Purchase of Sexual Services (the "Law") entered into force on January 1, 1999, as part of an act on violence against women titled *Kvinnofrid* (loosely translated as "Women's Peace") (Ekberg 2004, 1191-2). The act covered all forms of violence against women, including prostitution as an important one. In formulating the Law the government proposed that the purchase of a prostitute's services should be punished by a fine or up to six months in prison (Gould 2001, 441).

The Swedish policy of criminalizing the buyers of sexual services has roots in a 1993 Commission investigating prostitution. The Commission's report "expressed great concern about the damage prostitution did to all those involved – prostitutes, clients, the families, society as a whole" (Gould 2001, 439), focusing largely on the social and cultural effects within Sweden, as well as the international dimension of the global sex industry. It discussed the growth of the sex industry abroad and the role of new information technologies, the

involvement of organized crime, as well as the rising incidence of sex tourism, trafficking in women and the sexual exploitation of children (Gould 2001, 440). As such, the Swedish Law criminalizing the buyers of sex can be viewed as part of an overall strategy to combat what Swedish policymakers perceived as the negative effects of the global sex industry, domestically and abroad.

For Swedish policymakers, the proposal to criminalize the buyers of prostitution was based upon three main arguments: first, that prostitution was in conflict with the principle of equality between men and women; second, in countries where prostitution had been legalized, it was said to have increased; and third, the social costs of prostitution in terms of disease and crime were damaging to society as a whole (Gould 2001, 440-441). These arguments are consistent with the "prostitution as oppression" perspective that prostitution is a form of violence against women that should be abolished for the benefit of prostitutes and society as a whole. The radical feminist perspective that dominated Swedish policymaking completely rejects the liberal/sex radical feminist perspective of Dutch prostitution policy that prostitution might be thought of as voluntary, as a job chosen like any other. Instead, it is generally accepted that most prostitution should be regarded as forced. According to Gould (2001, 445), the Swedish feminist position was that

women were forced when they were too young to decide for themselves; as immigrants by fear of repatriation; when poor by basic material needs; and while addicts by their drug habit. Behind all this stood the demands and appetites of the procurers, the pimps and the punters and the growing trade in pornography, international trafficking, and the sexual abuse of children.

Swedish prostitution policy also incorporates the radical feminist view that prostitution and sex trafficking are issues that cannot, and should not, be

separated, as they are both harmful practices that are intrinsically linked. It is understood that the purpose of trafficking women and girls, in the overwhelming majority of cases, is to sell them into prostitution. Therefore, the best way to combat trafficking is for state governments to put in place measures against prostitution (Ekberg 2004, 1189). This perspective therefore views the legal and policy measures used in other countries, such as the Netherlands, to decriminalize or legitimize the sex industry as serious threats to gender equality and the rights and safety of all women and girls (Ekberg 2004, 1190).

To the extent that arguments were put forth opposing the move toward abolition, these were mostly concerned with the risk of driving the problem underground, rather than any dispute with the theoretical basis of the policy. It was thought that it would be the prostitutes who would suffer most from criminalization of the buyers, because not only might the women be in greater danger but they would be less able to take advantage of society's supportive measures (Gould 2001, 445). Sex radical feminist arguments for women's sexual self-determination and liberal arguments for prostitution as a viable form of work, such as those used in the case of the Netherlands, were missing from the debate. Gould (2001, 452) reports that

nowhere in the Commission's report was prostitution as a free choice of independent women seriously considered... There was little coverage of the liberal viewpoint in the press, no support for one in the Riksdag and no sympathy for it expressed in the interviews. Nor were the views of prostitutes taken into consideration except where they confirmed the victim-oriented mainstream discourse.

Scoular reaffirms (2004, 197) that the exclusion of some prostitutes from the debate surrounding prostitution contributed to the exclusion of the "prostitution as work" perspective. She states that, unlike in other countries such as the

Netherlands, prostitutes in Sweden are not represented politically, and have indeed been prevented from entering unions, "which is a vital factor for political recognition in Sweden. Thus any public opposition to the law was rare, voiced only in the press and rarely via the political process" (Scoular 2004, 197).

While Sweden has been applauded for taking a stance against prostitution as oppressive to women, critical sources claim that the radical feminist position adopted by Sweden is not driven solely by concerns for the well-being of prostitutes. Theorists such as Gould (2001) and Scoular (2004) argue that one aspect of the Swedish policy environment that shaped the discourse on prostitution is what they describe as the weak liberal and strong paternalist⁷ tradition of Swedish culture and social policy which favours a "strong state" and a "strong society" (Gould 2001, 452). This is in contrast to the Dutch tradition of pragmatism and consensus, and can partly be explained by Sweden's insular history as a country that was urbanized later than the Netherlands, and lacked the Dutch seafaring, commercial history and regular influx of migrants, leading to a more homogenous population. According to Scoular (2004, 198), "this background explains a greater confidence in the state and the broad consensus for heavier state determination and intervention in defence of the public good", through what she refers to as "social engineering." The role of the state thus becomes "a fostering one, one of legislating particular moral stances that the populace, guided by them in this way, will come to adopt" (Kulick 2003, quoted in Scoular 2004, 198).

⁷ Paternalist is defined as "a practice of ... governing people in a fatherly manner, especially by providing for their needs without giving them rights and responsibilities" (American Heritage Dictionary 2004).

Scoular describes (2004, 198) how "social engineering" undertaken by the state involves "using the ideological function of law to express a particular vision for society" (as opposed to the Dutch approach of using regulated tolerance to enshrine controversial practices into law), something she argues "is not new in the Swedish context." The Swedish portrayal of the issue of prostitution thus can be understood as primarily concerned with "taking a stand" against what they asserted was a reprehensible social practice. As such, the law criminalizing the buyers of prostitution has a normative function, which Ekberg (2004, 1205) expresses as

a concrete and tangible expression of the belief that in Sweden women and children are not for sale. It effectively dispels men's self-assumed right to buy women and children for prostitution purposes and questions the idea that men should be able to express their sexuality in any form at any time.

Some critics, however, note that "the overt use of the ideological function of law to communicate particular meanings about the morality of buying sex" (Scoular 2004, 201) ignores the issue of how these laws affect prostitutes in practice. Kulick finds (2004, 221) that, when confronted with the possibility that the Law might drive prostitution underground and make prostitutes more vulnerable to exploitation, proponents of the Law consistently responded that "the purpose of the Law was first and foremost to 'take a stance' or 'send a message' that 'society' did not accept prostitution," which he interprets to signify that the direct (rather than ideological) impact of the law on prostitutes was of secondary concern. Likewise, Scoular (2004, 201) finds that "the government response has been to say that the Law is not about improving conditions but is about ending

prostitution and that 'any negative impact on sex workers' is outweighed by 'the message' conveyed by the law.'"

What have been the effects of the Swedish Law criminalizing the buyers of prostitution? By some accounts, the Law has been successful in reducing the visibility of prostitution in Sweden's major cities. This is because, while the Law is meant to apply to all forms of sexual services (including those purchased on the street, in brothels, in massage parlours, from escort services or otherwise), enforcement of the Law has been directed mainly at clients and prostitutes engaged in street prostitution (Ekberg 2004, 1192). As a result, the Anti-Trafficking Group at the police authority in Gothenburg has stated that, since the Law has been in force,

the number of women involved in street prostitution has decreased by at least 30% to 50%, and the recruitment of new women has come almost to a halt. It is estimated that the number of women in prostitution has decreased from 2,500 in 1999, before the Law came into force, to no more than 1,500 women in Sweden in 2002 (Ekberg 2004, 1193).

Ekberg (2004, 1199) also cites a 2003 report by the National Criminal Investigation Department that concludes the Law has had direct and positive effects in limiting the trafficking in women for prostitution in Sweden. It estimates that the number of women trafficked into Sweden every year has remained steady at between 400 and 600 women, compared to rising numbers in other Scandinavian countries such as Denmark where an estimated 50 percent of the between 5,500 and 7,800 women in prostitution are victims of trafficking. She notes the reason for this is that Sweden has become a less attractive market for traffickers, who are concerned only about profits, marketing factors, and the risk of getting caught. The additional measures traffickers must take to ensure the

prostitutes, clients, and pimps are not caught create major difficulties that make Sweden an unfavourable destination (Ekberg 2004, 1199).

The Swedish women's movement and groups that work with prostitutes also report success with the new Law. They report that prostitute women (and a few men) are contacting them in greater numbers to get assistance to leave prostitution, and that the existence and the enforcement of the Law deters young women who are not yet in prostitution but who may be at risk (Ekberg 2004, 1204). NGOs working with women in prostitution have also stated that prostituted women have been able to bring

their buyers to justice, denouncing them to the police who have been able to arrest and bring successful prosecutions against the men not only for the purchase of sexual services but also for other sexual crimes such as rape, battering, and child sexual exploitation (Ekberg 2004, 1204).

While there is much to celebrate in these findings, critics caution that closer examination is required. Despite reports that police noted an initial drop in the number of prostitutes after the Law came into effect and enforcement began, within six months it seemed that many of the prostitutes who had left the streets were back again. Three government reports analyzing the impact of the Law and its enforcement have been released since the Law came into effect, none of which has concluded that it has resulted in a significant and sustained drop in prostitution in Sweden (Kulick 2004, 222). Critics claim this is because, despite the fact that prostitution incorporates a much wider range of activities than simply street walking, in practice the Law was most visibly and actively enforced in street prostitution, as it is much easier to prosecute than "off-street" prostitution

(Jessen 2000). As a result, in cities with larger populations of street prostitutes, the perception was that street prostitution had decreased.

But the reality was that the decrease in prostitution was only temporary, or that prostitution activity had moved to other locations, including other streets or indoor venues, and the Internet (Scoular 2004, 199, Ostergren 2004). Scoular finds (2004, 199), for example, that since the inception of the Law, there has been an increase in the number of sex ads on the Internet as some prostitutes in Sweden have been able to use the Internet to advertise and to raise their prices. However, this only benefits some prostitutes, as the most vulnerable ones remain on the street (Ostergren 2004). Kulick confirms (2004, 222) that the Law has driven some street prostitutes to desperation as they lack the resources to change location or put ads on the Internet to make up for the clients lost as a result of the law.

The greater enforcement of the Law in the area of street prostitution has had a negative impact on the most socially and economically marginalized prostitutes. Prostitutes who are unable to leave the trade or who choose to remain in street prostitution struggle because clients are fewer, leading to lower prices, and harder competition (because, as mentioned, the number of street prostitutes has not decreased significantly). This means street prostitutes have to accept more clients than before, and engage in more unsafe practices for higher rates (Ostergren 2004, Kulick 2004, 222, Scoular 2004, 200). It has also been noted by social workers and street prostitutes that the quality of clients has declined, with more unstable and dangerous clients who demand more violent and degrading forms of sex, and refuse to wear condoms. The women who cannot quit or move

their business because they have a drug habit or are illegal migrants, and are therefore unable or unwilling to make use of the measures aimed at their rehabilitation, are dependent upon and must accept these dangerous clients more often than they did before the passage of the law, when there were more clients and, hence, more choice (Kulick 2004, 222, Ostergren 2004). This in turn leads to greater psychological harm and exposure to sexually transmitted infections (Ostergren 2004).

As well, it has been argued that enforcement of the Law against buyers causes as much risk to prostitutes as to buyers, because the former depend on the success of transactions to make their living. Under the new legislation, street prostitutes are forced to work in more stressful situations, as negotiations must be done in a more rapid manner, and this makes it more difficult to assess clients (Scoular 2004, 200). The likelihood of ending up with a dangerous client is thereby greater. Another consequence is that prostitutes have become more apprehensive about seeking help from the police when they have problems with an abusive client, because they do not want to be forced to report the client. Ostergren also reports (2004) that the decrease in the number of prostitutes on the streets combined with a more stressful atmosphere has weakened previous informal networks amongst prostitutes, making it more difficult for them to warn each other about dangerous clients or give each other support.

Problems are also identified with regards to prostitutes' living situation. Landlords are forbidden from renting out premises that will be used for prostitution, thus prostitutes are forced to lie in order to rent premises, and are

constantly at risk of being evicted if they are found out (Ostergren 2004). Kulick adds (2004, 218) that the new Law also makes it difficult for prostitutes "to live with anybody, since their lover, roommate or friend could be seen as profiting from the sex worker's income, in cases where they share expenses or have joint bank accounts"; in this way the Law has been found to reinforce the social isolation of prostitutes (Europap, 1998-2000). Ostergren claims (2004) this is oppressive to prostitutes who would like to be able to live and work together for support and to ensure each other's safety, or who would like to cohabit with a partner. Not only does the Law make it difficult for a prostitute to have a family, but it also implies an underlying assumption that prostitutes are unfit parents, and therefore can lose custody of their children if they are found to sell sex (Ostergren 2004).

Migrant prostitutes are placed in an even more marginalized position. Kulick reports (2004, 223) that the enforcement of the Law is such that, if a prostitute found with a client is not a citizen or legal resident of Sweden, she is immediately deported, in the same way as the Netherlands. In some cases, this occurs so quickly that government prosecutors have been forced to drop charges because the prostitute is deported before she can even give a statement. Migrant prostitutes are also less willing to report on violence or any other crimes against them, knowing that if they are revealed to be prostitutes, they will be forbidden from ever returning to Sweden (Kulick 2004, 223). As well, some claim that the Law may have increased the risk of exploitation of migrant prostitutes, as evidenced by the increase in the number of illegal brothels in which Eastern and

Central European women are made to work, often under oppressive conditions (Kulick 2004, 222).

One final difficulty with the application of the Law against the buyers of prostitution is that it has made it more difficult for police to prosecute pimps and traffickers because "clients, who before the passage of the law were sometimes willing to serve as witnesses, are now disinclined to cooperate, since they themselves are guilty of a crime" (Nord and Rosenberg 2001, quoted in Kulick 2004, 222). This has created an obstacle for the police in their efforts to prosecute those who commit more serious crimes of exploiting the sexual labour of others, as legal cases against such pimps and traffickers are less likely to be supported by the testimonies of sex buyers (Ostergren 2004).

Prostitutes' rights advocates have been critical not only of the practical effects of the Law, but also of its theoretical implication in perpetuating the stigma of prostitutes and prostitution. Ostergren (2004), through her interviews with prostitutes, notes that many Swedish prostitutes "feel discriminated against, endangered by the very laws that seek to protect them, and they feel under severe emotional stress as a result of the laws." They feel that since the enactment of the new Law, they continue to be stigmatized as "weak, dirty, mentally ill, addicted to drugs and alcohol, and viewed as a victim" (Ostergren 2004). In terms of the way they are viewed in society:

Several sexworkers say that they feel used by politicians, feminists and the media. They think that sexworkers are only listened to and being paid attention to if they say the correct things, i.e. that they find prostitution appalling, that they are victims, that they have stopped selling sex and will never go back, and that they are grateful to the current prostitution policy and to the policy makers (Ostergren 2004).

Ostergren reports (2004) that prostitutes reject the idea that the Law punishes the clients and protects them, stating it has mostly had negative effects for prostitutes, and will do little to change the actions of men who buy prostitutes. In Svanstrom's (2005, 49) view, this is because, "patriarchal norms concerning sexuality still dominate the judicial system and public opinion." According to Svanstrom (2005, 50), these are reflected in the

discrepancy between radical laws and traditional norms in society... Although the Swedish state over a number of years has criminalized the purchase of sexual services – something which in practice means criminalizing a male behaviour – men's right to women's bodies still seems to be an implicit norm, and men's sexuality is still seen as women's responsibility.

She explains that, while there has been a radical change in the regulatory framework of the Swedish state's approach to prostitution, in practice, there are still patriarchal values at work, reflected in the implementation of the Law. For example, she cites recent court decisions that show that the purchase of sexual services by a man is regarded as a one-time occurrence where he entered into a temporary contract, while the selling of those services is considered to reflect upon a woman's character (Svanstrom 2005, 49). Patriarchal attitudes were also noted in the discrepancy between the stated objectives of the Law, and the lack of consideration given the issue by some politicians and the police, who often exhibited a reluctant attitude when giving resources to the work against trafficking in women for sexual exploitation. The victims were seen as "just prostitutes" who "want this anyway" (Svanstrom 2005, 56). These findings support the notion that will be proposed in the third chapter of this study, namely that prostitution remains a difficult issue to address so long as it is underpinned by the patriarchal values of society that stigmatize prostitute women.

This case study has shown that the image of "the prostitute" used by Swedish prostitution policy makers is consistent with the image employed in the "prostitution as oppression" discourse, where prostitutes are seen as victims of patriarchal oppression, and prostitution is seen as inherently violent and exploitative. The Swedish approach also shares the assumption that women who advocate for, or choose to remain in prostitution are victims of false consciousness, handmaidens of patriarchal capitalism, and undeserving of assistance if they choose to remain in prostitution. Finally, Svanstrom's 2005 study shows that, despite the use of radical feminist rhetoric regarding prostitution, the attitudes of judges, politicians, and law enforcement officials in Sweden may still reflect the sexual double standard and the deeply rooted "whore" stigma of Western society.

Canada

The third approach to prostitution policy examined in this section is indirect prohibition, as it is practised in Canada. Unlike prostitution policy approaches in the Netherlands and Sweden, the prohibition approach taken in Canada does not appear to be based on the gender equality concerns that motivate feminist theory, but rather on the perspective that prostitution is a matter of "public nuisance" whose harms should be prevented from affecting mainstream society. As such, the indirect prohibition approach in this country lacks an examination of the possible social and economic causes of prostitution in relation to issues of gender inequality. It also lacks a vision of the goal of policy, whether it involves legitimizing or abolishing prostitution.

The *Criminal Code of Canada* does not prohibit prostitution *per se*, but takes an indirect approach that prohibits most of the activities associated with prostitution, including offences relating to bawdy-houses (sections 210 and 211), procuring (section 212), and communicating (section 213) (Allinott 2004, 3). A report by the federal Department of Justice concedes that, "taken as a whole, these laws ensure that there is an element of illegality about prostitution, whatever form the practice takes, whether indoors or outdoors" (Canada 1989, 2). These laws make it difficult to engage in prostitution without breaking the law, with the result that "many sex workers face criminal consequences for engaging in what is an otherwise legal activity. This punitive legal system exacerbates the unequal social and economic position" of prostitutes in Canada (Allinott 2004, 2).

Brannigan states (1993, 3-4) that while prostitution is not unlawful in Canada, massive action against nuisance-related offences and the lenient use of the laws devised to protect prostitutes creates an emphasis on the suppression of prostitution, rather than on the protection of prostitutes. Brock adds (1998, 7) that criminal legislation in Canada is not expected to lead to the abolition or normalization of prostitution, but is intended to control the trade and keep it as invisible as possible. A report by the Federal/ Provincial/ Territorial Working Group on Prostitution (1998) outlines how these laws have been developed in a piecemeal fashion over time, and reflect a mix of the theoretical approaches of regulation, prohibition and rehabilitation of prostitutes that have characterized prostitution policy making in Canada. These different approaches illustrate the

way prostitution has been constructed as a problem in response to specific public concerns at different points in history (Canada 1998).

The development of modern prostitution policy in Canada can be traced to the repeal of the prohibition-era vagrancy law, or "Vag-C," in 1972. This law, which held that any woman risked prosecution as a "common" prostitute unless she could account for her presence on the street, was widely condemned with the rise of the women's movement. The law was found to be discriminatory because it applied only to women, and exhibited a blatant moral condemnation in its assessment of transgressive female sexual behaviour. "Vag-C" was criticized for restricting the freedom of women in public spaces, allowing the arbitrary use of police powers, and labelling women as prostitutes through the imposition of a criminal record (Brock 1998, 27). In 1972, Vag-C was replaced by Section 195.1 of the *Criminal Code*, which prohibited soliciting, stating: "Every person who solicits any person in a public place for the purpose of prostitution is guilty of a summary conviction offence" (Canada 1998).

Because it was unclear on the basis of the legislation whether "every person" included both prostitutes and clients, and what was meant by "public place" and "solicit," provincial courts of appeal struggled with interpretations of what these terms meant. Court decisions between 1972 and 1981 determined that a public place did not include a motor vehicle, and soliciting had to be *pressing* or *persistent* (Canada 1998). According to law enforcement agencies, these decisions restricted their ability to control street prostitution, and as a result, by

the early 1980's the soliciting section virtually ceased to be used (Canada 1989, 3).

At the same time that prostitution law was becoming more difficult for the courts to enforce, there were several social and economic factors that caused prostitution to increase in visibility. Brock examines (1998, 43) a "moral panic" that took place in response to a perceived growing "permissiveness" in the sex industry in Canadian cities in the 1970s. As a result, neighbourhood protest groups in major cities were largely successful in shutting down all sex-related businesses, including massage parlours and escort services. This changed the form of prostitution in Canada, as prostitutes were forced to find other venues, and many were shifted onto the streets (Brock 1998, 3). In addition to the crackdown on indoor prostitution, economic factors such as the effects of the 1970's recession on women's employment, not surprisingly, caused the appearance of an increase in street solicitation in urban centres. In addition, Brock describes (1998, 6) how inner city urban renewal practices and increased policing throughout the 1970s and 1980s caused prostitutes to come into direct contact with previously sheltered groups, or to be displaced completely from their established working areas. These factors combined to make the key issues "the *visibility* of prostitution and *control of the streets*" (Brock 1998, 44). Included in this problematization of prostitution was the moralistic view that "predetermined a 'common sense' perception of prostitution as a social problem requiring a legislative response. Marginalized through this process was an alternative approach: prostitution is work, and it must be treated as such" (Brock 1998, 6).

In response to the growing visibility of prostitution in the emerging upscale urban neighbourhoods, a powerful anti-prostitution lobby developed that included police, residents' organizations, and municipal governments. They demanded the legal tools and financial support to control the activities of street prostitutes and their clients who were becoming a "nuisance." The federal government was thus "confronted with the practical task of providing the legislative tools for clearing the streets of what was for some a nuisance and others a moral affront" (Brock 1998, 59). In June 1983, faced with considerable public pressure to remedy the "street prostitution problem," the federal government established the *Special Committee on Pornography and Prostitution* (the "Fraser Committee") to study the problem and to report solutions to the Minister of Justice. It held public and private hearings across the country in an attempt to obtain input from affected groups as to their concerns about prostitution. The hearings illustrated that the street prostitution issue divided the Canadian public:

it pitted municipal officials, police forces and citizens' groups, who felt that the *Criminal Code* should be strengthened to control street prostitution, against civil libertarians, women's groups and social services agents who favoured some form of decriminalization (Canada 1998).

Through the work of the Fraser Committee, prostitution was defined as a social problem that required both legal and social reforms. In the area of legal reforms, the Committee argued these were required to resolve the "contradictory and often self-defeating nature of the various *Criminal Code* sections relating to prostitution" that were largely responsible for the increase in street prostitution (Fraser Report, quoted in Canada 1998). In addition, the Committee noted that

the current prostitution laws failed to recognize the reality that efforts to crack down on prostitution in one context or location tend to produce a shift of the activity to another setting or location (Canada 1989, 5). The Fraser Committee also proposed social reforms as opposed to legal methods of dealing with prostitution; however, its mandate was restricted to a focus on legislative solutions to regulating prostitution, involving changes to the *Criminal Code* (Brock 1998, 66).

The Fraser Committee realized that it was impossible to establish a public consensus on prostitution; instead they aimed to reach an effective compromise solution that would balance the interests of the pro- and anti-criminalization advocates. The Committee proposed a public/private distinction as part of a regulatory strategy, allowing for more interference by the state in public sex work (street prostitution), while at the same time permitting certain contractual arrangements between individuals in private (prostitution in massage parlours or "bawdy houses"). It was believed that this distinction would correct the uncertain legal status of prostitutes by specifying in what contexts prostitution would or would not be permitted (Brock 1998, 70).

As such, some of the recommendations of the Committee could be understood as representing the "prostitution as work" perspective of liberal and sex radical feminists, as it chose to see prostitutes and clients as "willing, responsible actors who should not interact in public, but who should be afforded the same protection from force, threat or coercion that is available to all citizens" (Canada 1989, 5). With respect to street prostitution, it noted that the nuisance to

citizens was the main ill to be addressed, rather than any problem inherent in prostitution itself. However, Brock proposes (1998, 73) that the reason for the adoption of the liberal position was that efforts by the Committee to incorporate the radical feminist claim of a relationship between gender inequality and prostitution were constrained by the fact that general feminist support for decriminalization made radical feminist groups one interest group among many in the prostitution debate. She also notes that the adoption of the liberal discourse may represent the state's effort to take up, divert, contain, and neutralize grass-roots feminist activism (Brock 1998, 73), through, in Zillah Eisenstein's words, "the partial accommodation of feminism's least radical proponents, liberal feminists" (quoted in Brock 1998, 73). Finally, another obstacle for the inclusion of the feminist perspective on prostitution was the fact that, "while numerous feminist organizations presented briefs supporting the decriminalization of prostitution, their resources were clearly being spent disproportionately on the other issue being addressed by the Fraser Committee: pornography"; some argued that these resources could have been more fruitfully devoted to other issues of importance to women (Brock 1998, 74).

The Fraser Committee released its report in February 1985, and its compromise solution to the problem of street solicitation was immediately controversial. The recommendations it contained were not only unpopular with the pro-criminalization forces of police, local-level politicians, and residents' organizations, but were also out of step with a growing political conservatism in Canada. The Committee's attempt to reconfigure private/public distinctions to

address the public nuisance aspects of street prostitution, while creating greater freedom for the trade in private spaces, was rejected by the new Conservative government of the time (Brock 1998, 76). Instead, the Conservatives amended s.195.1 to make "offering to engage in prostitution" a *Criminal Code* offence. To this end, Bill C-49 was passed in December 1985 (Canada 1989, 6).

Bill C-49 forms the basis of current prostitution policy and law in Canada. Its most widely used stipulation is a section known as the "communicating law", which is aimed at more effective control of prostitution. The communicating law criminalizes

the communication, or the attempt to communicate with, or to stop a person in a public place for the purposes of obtaining the sexual services of a prostitute. The term "every person" means that both prostitutes and customers are liable to prosecution, while the term "public place" is defined as including a motor vehicle, thus clarifying two limitations of the former legislation (Canada 1998).

Brock (1998, 76) argues that Bill C-49 was clearly formulated to address the concerns of the pro-criminalization proponents, including police, local governments, and residents' organizations. It made selective use of the Fraser Committee's recommendations on street prostitution and co-opted its concept of a public/private regulatory system by creating a significant expansion of the definition of "public space," without opening up any "private space" where prostitution could legally take place. The result was that prostitution legislation became far more punitive than the Fraser Committee had intended (Brock 1998, 76-77).

Since its inception, civil rights groups have challenged the communicating law on the basis that its provisions are inconsistent with the rights to freedom of speech and association guaranteed by the *Canadian Charter of Rights and*

Freedoms (Canada 1989, 7). In May 1990, however, the Supreme Court of Canada held that,

while the communicating section is an infringement on the freedom of expression, the elimination of street solicitation, and the social nuisance it creates, is a governmental objective of sufficient importance to justify a limitation on the freedom of expression guaranteed by ss. 2(b) of the *Charter* (Canada 1998).

The stated purpose of Bill C-49 was not to deal with all the legal issues connected with prostitution, "but was a limited attempt to address the nuisance created by street soliciting that sought to balance the concerns of law enforcement agencies, citizens' groups, women's groups and civil libertarians"; in other words, its focus was on criminalizing the *public* activities engaged in for the purpose of offering or purchasing sexual services (Canada 1998), rather than any wider social objectives. Although the intent of Canadian prostitution policy today is to remove the nuisance factor of the prostitution transaction by moving clients and prostitutes off the street by criminalizing their behaviour, the approach lacks a social and ethical vision to guide the ultimate goal of the policy. As such, the mandate conferred upon local enforcement agencies and the criminal justice system is unclear: Is it the elimination of prostitution, where the law is employed to deter and incapacitate both actors from engaging in street prostitution? Or is it containment, where the primary objective of the law is to reduce the public nuisance effects, through regulation rather than deterrence or incapacitation strategies (Canada 1989, 7)? The Justice Minister at the time claimed the legislation was expected to act as a deterrent for prostitutes and clients, reducing the need for arrests; "instead, however, the legislation gave police a mandate to

act by providing a legal tool that would be effective for making arrests and for successful prosecution in the courts" (Brock 1998, 78).

Proponents of Bill C-49 believed that it would enable police and the courts to control street prostitution and would rectify the inequality of charging prostitutes rather than clients. Critics of the Bill, including many social agencies and women's groups, however, suggested that it would have a harmful effect on street prostitutes, "forcing them into the hands of pimps, driving them underground, alienating them from the police and making their work more dangerous" (Canada 1989, 7). It was anticipated that prostitutes would be victimized not only because they were liable to arrest and prosecution, but because the displacement of street prostitution activities to new and unfamiliar locations that offered less protection would increase the risk of violence to prostitutes by pimps and clients (Canada 1998).

In October 1990, a Department of Justice report was released detailing the results of research on the effects of the communication provision. It indicated that "the law was not meeting its objectives as its main effect in most centres had been to move street prostitution from one downtown area to another, thus merely displacing the problem" (Canada 1998). Despite the rate of arrests, some cities reported an increase in street solicitation, while others reported a decrease. A deterrent effect was reported by police in some media sources; however, these were later contradicted, as it was found that prostitutes adapted to the new punitive conditions and switched to other forms and locations of prostitution (Brock 1998, 79), in much the same way as the Swedish case.

Research by prostitute activist groups identifies three main areas in which Canadian prostitution policy exacerbates the negative situation of prostitutes: the violence faced by prostitutes, their lack of access to housing, and their enmeshment in the criminal justice system. First, prostitute activists claim that the existing legal structure of Canadian prostitution policy brought in by the communicating law contributes to and in some cases creates the conditions that make violence a regular occurrence in prostitutes' lives. They argue that the communicating law is responsible for the unsafe working practices adopted by prostitutes in their efforts to avoid prosecution. Specifically, prostitutes have stated they now work under more tense conditions, as police arrests have reduced the number of clients and the amount of money available on the street. As a result, street prostitutes noted that they had less discretion and were more likely to accept "dates" that were questionable (Canada 1989, 89). Because clients were fewer, prostitutes said they were forced to make transactions more quickly in order to avoid detection by the police, including getting into vehicles too quickly and without having the opportunity to assess the potential for violence (Allinott 2004, 17), "thus rendering it more likely for the transactions to be on the customer's terms, and at his price" (Brock 1998, 81). Although some police forces felt that their ability to arrest clients helped "weed out" some of the more dangerous individuals, some prostitutes believed the legislation simply made their lives more difficult (Canada 1989, 89). These examples may support the claim by liberal/sex radical feminists, discussed in the previous chapter, that the harms of

prostitution are not inherent, but are, in many cases, a direct result of its criminal status.

Allinott notes (2004, 23) that the enforcement of the communicating law by police to control street prostitution may reduce its visibility by relocating prostitutes to different areas and changing the times they can work, but does not reduce the overall number of prostitutes on the street. Instead, by enforcing area restrictions aimed at removing prostitutes from the main prostitution strolls, women are placed in greater danger. Relocating prostitutes and forcing them to work alone and in isolated, dimly lit, non-residential areas in order to avoid prosecution makes them more vulnerable to violence (Canada 1989, 89, Allinott 2004, 17-23). The "bawdy-house law" also prohibits sex workers from working indoors and forces them to work in isolation, subjecting them to further risks of danger (Allinott 2004, 17).

The second major effect of the legal system is on housing for prostitutes. Securing safe, comfortable and affordable housing is already a problem for street prostitutes, whose situation is generally affected by poverty. They argue that Canada's prostitution laws make inadequate housing an even greater problem. Specifically, the bawdy-house law makes prostitutes "suspect tenants" in the eyes of landlords who, fearing prosecution, at times refuse to rent to someone they think may be a prostitute. In their economically marginalized position, most street prostitutes are unlikely to have any real recourse against a landlord who refuses them accommodation or evicts them on this basis (Allinott 2004, 15).

Prostitution activist groups such as the Prostitution Awareness and Action

Foundation of Edmonton (PAAFE) (2005, 6) point out that:

Without safe, appropriate and affordable housing, women who wish to leave the streets have no alternative options for where they can work on their physical, mental health and/or addiction issues, be free from violence and pressures of the street, and where they can nourish themselves and rest and prepare for a viable future for themselves and their families.

In addition, the law against living off the avails of prostitution potentially exposes roommates or partners to prosecution if a sex worker's earnings pay for rent and household expenses (Allinott 2004, 15) – a problem that was also identified in the Swedish case.

The third main problem is related to the interaction of prostitutes with police and their enmeshment in the criminal justice system. Most prostitutes experience a difficult relationship with law enforcement, in which a general distrust of police makes them “unwilling to report violence incidents to police for fear of being disbelieved or discounted because of their occupation or even of being prosecuted for prostitution-related offences” (Allinott 2004, 17-18). In general, prostitutes reported that their criminal status exposed them to abuse (verbal, physical and sexual) by police. They are reluctant to report sexual or other assaults to the police for fear of reprisal, facing discrimination, or being “tagged.” They reported being insulted, ridiculed and treated dismissively when reporting incidents, for which little or nothing was usually done anyway (Allinott 2004, 25), suggesting that enforcement of Canadian prostitution laws reflects the view of prostitute women as undeserving of the same rights and protections as other Canadians. The high proportion of prostitutes who received prison sentences and yet continue to work the streets suggests that prostitutes in general

were not being deterred by short periods of incarceration or fines (Canada 1989, 65). This may be because, once convicted, prostitutes had no other option but to work on the streets again to make the money to pay the fine (Brock 1998, 82), due to their lack of other income and their criminal records.

Beyond unfavourable interactions with the police, prostitutes also face obstacles relating to the criminal justice system, as prostitute advocates claim that Canadian prostitution law

fails to facilitate their choice to leave the sex trade. Exiting the sex trade poses unique difficulties and in many cases requires the assistance of service providers on a number of levels. A criminal record adds to this difficulty, makes it harder to find and maintain other employment and can effectively trap a sex worker in the sex trade... Exiting the sex trade is notoriously difficult for sex workers who face obstacles to employment, such as lack of education, housing, health problems and poverty (Allinott 2004, 26).

A report by PAAFE (2005, 6) identifies prostitutes' prior enmeshment within the criminal justice system as a barrier to exiting the trade, particularly the challenges convicted prostitutes face in securing employment and education. A related difficulty is, because prostitution is criminalized and not recognized as legal employment, prostitutes do not have the possibility of becoming eligible for work benefits such as unemployment insurance and maternity benefits.

According to PAAFE (2005, 6), the current pardon process presents an added barrier to women who are trying to move past the stigma of a past involvement in street prostitution, as in many cases women seeking a new start are unable to enter the work force or to enrol in educational programs because of their criminal histories. The report points out (PAAFE 2005, 28-29) that the demanding application process for pardons (which includes obtaining the criminal record, proof of convictions, local police records check, and court information of the applicant, as well as the application processing fee) is exclusionary and an

obstacle in itself to those with literacy deficits, those with limited access to the information, and finances to pay for the costs. Finally, even once the process has begun, successful attainment of a pardon is not guaranteed and may take several years (PAAFE 2005, 7).

The application of prostitution policy in Canada has many negative practical effects because it remains rooted in practices and societal attitudes that are discriminatory against prostitutes and women in general. Implicit in the prohibition approach is a moral judgment upon women's sexual conduct. Evidence of this is found in the fact that, although the communicating law applies to both clients and prostitutes (male and female) and was intended to reduce inequalities in the application of the law, the overall rates of arrest for female prostitutes remained higher than for clients and male prostitutes across the country (Canada 1989, 42, Canada 1993 quoted in Davis 1994). Analysis of differences in sentences imposed on prostitutes and clients also suggested that there was discrimination against prostitutes in some cases, as they received more severe sentences (Canada 1989, 64). Brock (1998, 7) asserts that the selective use of punitive legislation on female prostitutes is evidence of widespread support of the use of the law "as necessary for defining and enforcing a society's moral code"; thus, in much the same way as the Swedish case, "the function of the law is therefore as important for its symbolic implications as for its practical application."

One further aspect that makes the Canadian case of prostitution policy distinctive is the way it affects one of the country's most marginalized groups,

Aboriginal women in prostitution. In the case of Canada, the intersections of racism and the colonial legacy of patriarchy and cultural assimilation have created particularly dangerous and oppressive conditions for Aboriginal women, who represent in many regions a disproportionately high percentage of the prostitute population. Farley et al. (2005, 245) therefore stress the importance of "placing prostitution in historical context" in the case of Canada's Aboriginal people, to understand "the combined effects of poverty, race discrimination and cultural losses" as "likely contributing factors to high rates of interpersonal violence, depression, suicide and substance abuse" (Kirmayer 1994, quoted in Farley et al. 2005, 245). The combination of the structuring factors of many Aboriginal women's lives (poverty, addictions, domestic violence, and racism) increases the likelihood that they will end up in the most marginalized and vulnerable positions such as street prostitution.

Brock notes (1998, 96) that the underlying factors that cause certain groups of prostitute women to be victimized remain obscured, as the state of prostitution policy in Canada remains dominated by the stereotype of "the drug addicted, usually young, prostitute beaten and abused by her pimp", co-existing with a view of prostitutes as "selfish, foul-mouthed intruders in accounts of the residents' and hookers' battle for the streets." As such, the image of "the prostitute" adopted by Canadian prostitution policy developers is a conflicted one, between a woman who should be protected, and one who should be punished. It is no surprise, therefore – in light of the confusion and misunderstanding – that Canadian prostitution policy has not succeeded either in protecting or diverting

women from prostitution. Instead, Brock argues (1998, 96) that Canadian prostitution policy's focus is misdirected, as

the roles of systematic racism, homophobia, gender inequality, not to mention the limited opportunities for working-class women within the Canadian class structure, remained predictably unacknowledged. Thus these important features of the Canadian social structure escaped being constituted as social problems requiring public and state response.

While the Dutch and Swedish approaches are counterposed in this study and others, Kilvington et al. propose (2001, 89) that they nonetheless start from a common understanding of prostitution as a problem that can be addressed through state intervention. In the Netherlands, prostitution policies of regulation and taxation of the sex industry are intended to dissolve a flourishing black market, to empower exploited workers, and to criminalize more intensely those who operate "informally" outside the new regulations or who coerce women into prostitution. In Sweden, the problem of prostitution is seen to consist in its status as an activity that oppresses women, and the reforms aim to solve the problem by removing demand and reintegrating prostitutes into mainstream society. Kilvington et al. (2001) suggest, however – as this study has found – that these policies have the similar effect of benefiting certain groups of prostitutes, while increasing the marginalization of the most vulnerable groups of prostitutes, including street prostitutes, drug addicted women, and illegal migrants. In Canada, where policy approaches lack a substantial feminist framework in their development, the effects on prostitutes are even more pronounced and harmful. It would appear, then, that prostitution policy in the case studies discussed here may be determined more by the government's attempt to "take a stance" that reflects national identity (as

liberal and tolerant in the case of the Netherlands, as concerned with gender equality in the Swedish case, and as condemning vice and minimizing public nuisance in Canada), rather than by concern for the needs of prostitutes.

The third chapter of this study examines the underlying assumptions of the feminist (or non-feminist) policy approaches in these three case studies, in order to identify their shortcomings. It examines how essentialized views of "the prostitute" in all three cases are stunting the effectiveness of prostitution policy, and proposes that this is because Western society remains rooted in patriarchal ideologies that stigmatize commercial sex and women's transgression of sexual and social boundaries.

Chapter Three: Accounting for Policy Successes and Failures

The previous two chapters of this study have examined contrasting feminist approaches to prostitution, the translation of their underlying theoretical frameworks into policies in three representative case studies, and the successes and shortcomings of the resultant policy approaches in addressing the practice of prostitution. This chapter attempts to account for some of the results of these prostitution policies by applying the critiques of several theorists to the feminist approaches that inform the policies. In doing so, this chapter aims to evaluate the success or failure of these policies, not only in relation to their stated objectives, but in relation to their convergence with the overall feminist goals of trying to improve the lives of prostitutes and their possibilities for making meaningful choices about their occupation, as well as improving the social positioning of all women in Western society.

Specifically, this chapter proposes that the policy approaches to prostitution discussed in this study are flawed because they rely on essentialized understandings of prostitution that do not account for the full range of experiences of women in the sex industry, the various contexts in which prostitution takes place, and the diverse meanings attributed to the prostitution transaction. As Ferguson states (1984, 107), the problem with the oppositional "prostitution as work" and "prostitution as oppression" approaches is that they

do not exhaust the possible feminist perspectives on sexual pleasure, sexual freedom, and danger. Both sides are working with a number of philosophical assumptions about the nature of sexuality, power, and freedom that have never been properly developed and defended.

As a result, these approaches fail to achieve a comprehensive way of understanding prostitution that would challenge the patriarchal structures of Western society that reinforce the negative stigma of prostitutes, which in turn justifies violence against prostitutes, divides women into categories of "madonna" and "whore," and restricts expressions of female sexuality. I propose that what is required instead is a combination of the elements of the various feminist frameworks, in order to produce an approach that will allow for a variety of understandings of women's diverse experiences in prostitution, while addressing the underlying oppressive patriarchal structure that constrains women's sexual roles.

This chapter begins with a critique of the use of essentialized images of "the prostitute" (and women's experiences in and the context of the practice) by the main feminist perspectives. This is followed by an account of the inadequacy of these approaches, in a discussion of the "whore" stigma, including its origins, significance, and effects. This chapter concludes with suggestions of possible new ways of understanding female sexuality that allow for diversity of experience without assigning stigma.

3.1 Limitations of the essentialist feminist perspectives

As the case studies in the previous chapter have shown, policy approaches to prostitution in Western industrialized countries aim to address prostitution and improve the situation of all women according to the associated feminist frameworks' understandings of sexuality, patriarchy, capitalism, and "the prostitute." The policies that they entail, however, often result in unintended

consequences that perpetuate the stigmatization and marginalization of the most vulnerable women in prostitution. The reason for this is that the essentialized view of the experience of "the prostitute" used to conceptualize prostitution – the autonomous, empowered woman in the case of Dutch policy, the exploited woman victimized by the patriarchal structure in the case of Swedish policy, and the social deviant who is both a victim of pimps and a nuisance to the public in the case of Canadian policy – is inadequate to represent the full spectrum of women's experiences in prostitution. As Scoular points out (2004, 196), the use of these feminist ideologies in policy formulation has created a legal system "premised on an asocial and essentialized understanding of prostitution and gender relations. While strong on rhetorical power," she argues, these approaches are "ultimately weak in terms of dealing with the complexities and contradictions inherent in analyzing the selling of sex across space and time."

Prostitution theorists identify many flaws with the essentialized perceptions of "the prostitute" and her experiences, and of the context in which prostitution takes place. Chapkis argues (1997, 31-32) that the range of experiences of prostitutes is far more varied than a single feminist rhetoric can express. She notes that prostitution functions as a trope in these competing discourses of female sexuality: for sex radicals, "the prostitute" is an "undomesticated outlaw" who invokes prostitution as a tool of liberation, while radical feminists depict prostitution as a realm of oppression and prostitutes as "sexual slaves and exploited objects." Chapkis notes (1997, 32), however, that

the use of the prostitute "as a symbol has also served to obscure the real complexity of her life."

According to Valverde (1985, 17), one problem with these essentialized understandings of prostitution is that they try to define "the 'essence' of sexuality as though it were a natural object," and in doing so, they "neglect historical and sociological analyses in favour of naturalistic assumptions about what sexuality 'really' is." She criticizes these assumptions for viewing sexuality as absolute and unchanging: for radical feminists, sexuality is a zero-sum, contradictory force whose conflicting aims place men and women in opposition; for sex radicals, sexuality is a natural force that resides in the individual and has been bottled up and suppressed by social regulation.

These naturalistic interpretations leave no room for the idea that sexuality is shaped by interactions between social forces and individual experience, and is thus being constantly redefined over time. McClintock argues (1992, 94) that sexuality is subject to transformation as "history changes the meaning of the sexual body"; in the case of prostitution, therefore, "there is no one privileged narrative," as all prostitutes "do not share the same reasons for entering the trade, nor do they experience the work in the same way." Chapkis points out (1997, 98), for example, that while the work of prostitutes is labeled under the common experience of "prostitution," "their accounts of that experience vary dramatically from the 'happy hooker' to the 'sex work survivor.'" In light of the differences in context for each woman involved in prostitution, Pheterson notes (1996, 18):

debates concerning women's agency versus victimization in prostitution are misleading... [V]ictimization and agency are not mutually exclusive: women may at

times be victimized in their quest for greater agency and at other times be compelled to take transgressive initiative in their attempt to escape constraint.

Beyond the differences in women's experiences in prostitution, Zatz adds (1997, 279-280), even similar experiences may be interpreted in contradictory ways by different women. He states that, by reducing prostitution to an act of autonomy or of exploitation, totalizing theories of prostitution eliminate its complexity and encourage us "to forget the variety of meanings that participation in a 'single' practice can have for different individuals or groups, even within a single historical moment." He states, for instance, that there is evidence to suggest "that prostitutes experience their profession in widely varying ways," relating to "underlying features of their situation and with how they have learned to understand, interpret, and explain the world around them." Thus, he states, "any attempt to impose a single description of the event as what really is happening" in the prostitution transaction makes the crucial and false assumption that the parties of the transaction experience it as "an event whose meaning is fixed independent of the context in which each participant experiences it or by a context that is identical for each participant" (Zatz 1997, 295), neither of which, he argues, is an accurate representation of an event with multiple and shifting meanings, such as prostitution. Zatz (1997, 280) goes so far as to suggest that the different feminist theories of prostitution, in the way they understand sexuality, gender relations, and commercial exchange, play a role in the production of the experiences of women in prostitution "by helping to constitute their interpretive lens or by playing a role in constructing the context that constrains their experiences," for example, through criminalization policies. Thus, he states that part of the

"relevant 'context' for understanding and evaluating prostitution... must be the discursive resources through which it is interpreted and contested" (Zatz 1997, 280).

Davidson proposes (1998, 18), then, that understanding prostitution requires us to see it "as a social practice embedded in a particular set of social relations which produce a series of variables and interlocking constraints upon action," but, at the same time, also requires us to understand that "people come to prostitution as *individuals* with particular personal histories and beliefs," and these also affect their experience in prostitution. Therefore, Chapkis (1997) disputes the essentialist tendency of feminist theorists to rely on a single image of "the prostitute" as a symbol of either female rebellion or oppression in their competing versions of prostitution. She argues, instead, that "the prostitute"

is an invention of policy makers, researchers, moral crusaders, and political activists... The prostitute is a shape-shifter alternately embodying sex, crime, gender, violence, work... For this reason, the prostitute is simultaneously a worker, a victim, a collaborator, a renegade, and a police statistic. Each of these positions represents a strategic account constituted by and giving expression to a complex field of power and resistance. The resulting account reflects as much on the needs of the individual or social movement invoking her as the reality of the sex worker herself (Chapkis 1997, 211).

McClintock concludes (1992, 94) that it is thus crucial "to remain alert to the nuances and paradoxes of prostitution rather than to patronize prostitutes as embodiments of female sexual degradation or to glamorize them as unambiguous heroines of female revolt."

Because of the variety of the experiences of women in prostitution, the task of providing evidence to support one feminist approach over another is fruitless. According to theorists such as Davidson (1998, 113), the use of

experiential data to support either perspective does not bring us any closer to the "truth" of prostitution, as:

It is not hard to find 'sex workers' who are prepared to 'voice' the view that they freely elected prostitution as a form of work, even to argue that prostitution allows them a greater degree of control over their own sexuality than that enjoyed by non-prostitute women, and equally there is no shortage of former prostitutes who are prepared to 'voice' the view that their experience of prostitution was akin to that of rape or sexual abuse.

She concludes, therefore, "since prostitutes do not speak with one voice on the subject, it is very easy for theorists to 'cherry pick' in order to support their own preconceptions about prostitution" (Davidson 1998, 114).

Chapkis proposes (1997, 212), instead, that it is important to listen to the experiences of prostitutes without "reducing them to competitors for the status of Truth" or dismissing any account that does not conform with our beliefs as "false consciousness" or collaboration with patriarchy. This would require us "to listen for meaning, rather than just 'fact,'" and to consider "how the location of the speaker shapes the tale, how the position of the audience affects what is heard, and... what is at stake politically, personally, and strategically in invoking this particular version at this moment in this context" (Chapkis 1997, 212). Pheterson adds (1996, 18) that the search for the one true representation of the experience of "the prostitute" is misleading, "as if scientific demonstration of a high percentage of violated women or of 'free women' would change the critical fact that *both* coerced and autonomous prostitutes are punished by law and stigmatized by society," a practice which is "reprehensible regardless of the number of persons concerned."

Beyond their critique of the essentialism of feminist perspectives on prostitution, many theorists identify specific problems with both the "pro-

prostitution" and "anti-prostitution" perspectives. For Zatz (1997, 293), the sex radical position taken by some "prostitution as work" advocates, that prostitutes are oppressed as sexual minorities, may be problematic. He argues that treating having sex for money as just another sexual variation "obscures the fact that the vast majority of prostitutes enter their profession simply to earn money, not because sex for money turns them on." Davidson reaffirms (1998, 209) that while there is

no reason to object to individuals indulging a personal taste for anonymous sex involving the exchange of money, very few people's prostitution represents a positive choice over how, and with whom, to have sex. And if, for the mass of prostitutes, prostitution is not a sexual 'orientation' or preference, it cannot be rehabilitated within a new, more liberal framework of *sexual* ethics.

For Valverde, the sex radical perspective is problematic in its focus on consent as the determining factor of sexual ethics. She states (1985, 200) that, while "the idea of consent is of course crucial to any feminist sexual ethics," it must be acknowledged that, particularly in the case of prostitution, "we are not autonomous individuals with equal amounts of power. Therefore, the notion of consent cannot suffice to build a sexual ethic, for information and power are necessary preconditions for true consent." Ferguson adds (1984, 110) that "any feminist position has to examine the concept of *consent* itself in order to explore the hidden power structures that place women in unequal (hence coercive) positions." In this regard, Valverde (1985, 200) criticizes prostitute activists who claim that engaging in prostitution is a subversive action in and of itself because:

there is not much creativity in the constant breaking of taboos, for it does not in itself entail an examination of why certain things are taboos and not others. We are not any freer from the old morality than those who respect taboos. This framework does not allow us to distinguish between desires, nor does it give us criteria by which we can evaluate them.

Instead, Valverde proposes (1985, 201), "we need a framework that allows us to understand why women do indeed feel certain desires and not others, and what the political and social implications of various desires might be." She concludes that the sexual freedom sought by sex radicals will not be achieved by simply removing the barriers of sexual repression, such as laws criminalizing prostitution; instead we need to understand how not only is our own sexuality constructed by us as individuals, but also how "the culture around us, our sexual partners, our friends, and our political values are all involved in the process" (Valverde 1985, 202). A similar critique could be made of the liberal feminist focus on labour rights: that it lacks an analysis of the structuring factors that shape women's roles and marginalize their forms of labour.

On the other side, some prostitution theorists have identified critiques of the radical feminist perspective. As I discussed in the first chapter, while the radical feminist approach to prostitution is critical of patriarchy, it is flawed because it takes an essentialized view of male sexuality and dominance over women. Some believe that the radical feminist approach reinforces negative attitudes toward sexuality because, according to Rubin (1984, 301), it exposes only the negative side of sexual behaviour, treating the worst available examples as representative of all sexuality. She states, "this rhetorical tactic consistently misrepresents human sexuality in all its forms. The picture of human sexuality that emerges from this literature is unremittingly ugly." In representing sexuality in this way, Nagle argues (1997, 7) that radical feminism "fails to theorize a positive, autonomous view of female sexuality, instead reproducing much of

society's deeply held ambivalence about female sexual agency." Zatz submits (1997, 289) that, paradoxically, much of the harm of prostitution that radical feminists cite as evidence of this negative image of sexuality "is a product, not of the inherent character of sex work or sexuality itself in any society," but of the legal systems that radical feminists seek to uphold which criminalize prostitution and marginalize and oppress sex workers. As a result, the work of many prostitute advocates focuses on how "patterns of legal regulation and enforcement operate to create the very phenomenon of prostitution to which [abolitionist] feminists have endeavoured to generate legal responses" (Zatz 1997, 283). He goes on to state:

Criminalization does not simply 'repress' a pre-existent thing called 'prostitution,' nor is it irrelevant to a practice instead wholly determined by underlying features of male sexuality and/or capitalism. Instead, it aids in the production of a particular mode of sex work. Critics who overlook this productive role are at risk of getting their analyses precisely backward. Concluding from current characteristics of prostitution that it is a bad thing, they may conclude that efforts should be made to deter and eliminate it. But if existing efforts to deter or eliminate sex work are themselves the causes of its oppressive characteristics, then the appropriate response might be to eliminate these efforts, not commercial sex (Zatz 1997, 302-3).

Indeed, as Brock argues (1998, 139), "although the criminal label is not the only force at work in the creation of 'the prostitute' as a deviant identity and outcast status, the most difficult part of the prostitute identity," she states, may not be any inherent problem with using one's body for sexual commerce, "but the stigma of the occupation, which criminal sanctions reinforce."

Zatz (1997, 290) also challenges the radical feminist representation of prostitution as the logical positioning of women in a patriarchal capitalist system; if prostitution is located at the intersection of patriarchy and capitalism, as some radical feminists attest, this does not explain why prostitution is "the subject of

repressive and marginalizing legal regulation and why its open practice is so widely abhorred." He proposes,

if sex work is such a seamless fit with organizing principles in Euro-American society, the question should not be why is it tolerated at all but why is it tolerated only as a marginal, degraded activity without official legitimacy [and] decried by those with precisely the conservative sexual values that prostitution supposedly upholds (Zatz 1997, 299).

The radical feminist perspective is also critiqued by theorists such as Kempadoo (1998, 9) for the way it challenges and sometimes altogether denies the agency and self-representation of prostitutes, by accusing them of "acting with a 'false consciousness', or as handmaidens to patriarchal capitalism." Pheterson states (1996, 83), "women who claim self-determination *as prostitutes* lose victim status and ideological sympathy." Queen adds (1997, 130), "even when a supportive hand is extended, it often comes with a stipulation: get out of the business or do without help. The not-so-silent message is, if you elect to stay in the sex industry you can expect abuse, and we can (will) do nothing to help you," echoing Doezenia's concern with the forced/ voluntary dichotomy discussed in the first chapter of this study. Pheterson claims (1996, 83) this conditionality and rejection of prostitutes' agency indicates that, for radical feminists, "a whore is viewed either as a casualty of the system or as a collaborator with the system. She is not considered an ally in the struggle for survival and liberation."

In response to this, we can apply Gardiner's idea (1995, 9 quoted in Kempadoo 1998, 9) that the recognition of agency is integral to feminist theories of social transformation, in that "any theory that denies women 'agency' retards the changes in patriarchal social structure for which feminism strives, because it denies the existence of an entity to attack those structures." Kempadoo states

(1998, 9) that in radical feminist analyses, prostitutes "remain relegated to the status of objects, seen to be violently manipulated and wrought into passivity and acquiescence." As such, they argue that prostitution has been excluded from the critical feminist project that interrogates gender relations through a lens "that assumes that women are both active subjects and subjects of domination" (Kempadoo 1998, 9).

Nagle proposes (1997, 6) that the radical feminist denial of prostitutes' agency on the grounds that "no woman with other options could possibly choose sex work" is underlain with the assumption that no woman would "risk the stigma, give up the privileges, take on pariah status, [and] do something many believe is aesthetically if not morally offensive," unless she were forced. From the perspective of some prostitutes, however, the idea of choosing prostitution is not contrary to feminist principles:

Like the bisexual woman, the proud harlot, the lesbian feminist stripper, and the part-time whore working her way through grad school all suggest that women can *choose* the less socially sanctioned of the good girl/bad girl boxes, and can do so out of liberation rather than compulsion, or can refuse the dichotomy entirely (Nagle 1997, 6).

For prostitution theorists who argue that prostitution can be a free choice for women, the abolitionist approach taken by radical feminists is misdirected. As Rubin states (1984, 302), "we need to analyze and oppose the manifestations of gender inequality specific to the sex industry. But this is not the same as attempting to wipe out commercial sex." Pheterson adds (1996, 60) that radical feminist strategies "aim to liberate the worker by eliminating the work," which, as was discussed in the previous chapter, has had the effect in practice of further marginalizing women who are unable or unwilling to leave prostitution.

3.2 Combining perspectives – Linking patriarchy and the “whore” stigma

It becomes apparent, from the diversity of understandings that different feminist approaches possess for concepts such as sexuality, patriarchy, commercial exchange, and women's agency, that prostitution is a complex phenomenon. For this reason, it is impossible to understand it through a single analytical lens, or by essentializing the experience and context of prostitution. Vance proposes (1984, 1) – from a sex radical perspective – that prostitution occurs in a context where female sexuality can be simultaneously a domain of “restriction, repression and danger as well as a domain of exploration, pleasure and agency.” She adds that by focusing solely on the individual actions of prostitutes, we ignore the patriarchal structure in which these actions take place; yet to speak only of the sexual violence and oppression that some prostitutes experience ignores the potential for women's sexual agency and choice within the profession. As Nagle states (1997, 9), when addressing the complexities of prostitution, it is thus necessary to break down our narrow categories of analysis and develop “more dynamic, interparadigmatic approaches” that will engage and deconstruct the dialectic of the debate surrounding prostitution and uncover hidden areas of agreement. I propose that a combination of the various theoretical approaches to prostitution is required lead us closer to the root problem that structures society in a way that marginalizes and stigmatizes women in prostitution, through what is referred to as the “whore” stigma.

Pheterson states (1987, 215) that the “whore” stigma is “specifically a female gender stigma which can be defined as ‘a mark of shame or disease on an

unchaste woman.” Nagle proposes (1997, 4-5) that the stigma arises from the way in which Western societies shape female identity: “female identity in this culture takes shape in relation to a variety of binaries ... These binaries construct identity by forcing females to choose, or at least negotiate between them.” When it comes to constructions of female sexuality, one of the main binaries is between “madonna” and “whore.” On which side of the binary a woman falls depends on her chastity. As Pheterson explains (1987, 221-224),

traditionally, a girl is supposed to remain a virgin until she marries ... If she should engage in sexual relations before marriage, then she becomes unchaste and, in some cultures, ineligible for a marriage of standing ... For adult women, the criteria of chastity is not virginity, but monogamous marriage. And, the keeper of female sexuality is not the father, but the husband.

Shrage reaffirms (1994, 133) that, in Western society, women “who are chaste, and even perhaps virginal, are regarded as having greater social worth and status,” and that, “for women, sexual experience can be a source of social embarrassment, and allegations of sexual conduct are often used to ‘put a woman down,’ assault her integrity, and establish her a socially damaging reputation.”

For many theorists, the “whore” stigma signifies an attempt to enforce a single vision of appropriate sexuality and stigmatize those who engage “in sexual activity outside the legitimated boundaries of married, heterosexual monogamy” (Zatz 1997, 293). Feminists who identify with the sex radical perspective, such as Queen (1997, 131), oppose “the anti-whore sentiment that grows out of the conviction that there is only one kind of appropriate sex and that all others are sinful and/or abusive.” For others, such as Pheterson (1996, 11), the discourse surrounding the “whore” stigma and concepts of women’s chastity “serve[s] to mystify the social control of women. Discriminatory restrictions on female

behaviour are then referred to as necessary 'protections' of innocent women from corruption or contagion."

Pheterson's statement reveals the important fact, from any feminist perspective, that the "whore" stigma applies not only to women in prostitution, but to any woman who transgresses sexual norms: "The epithet 'whore' carries as many connotations of female sexual impropriety (in particular, having too many partners) as it does of commercial sex" (Zatz 1997, 293). Davidson (1998, 131) states further that, in modern Western societies, even non-prostitute women whose behaviour is "interpreted as 'inviting' sexual objectification and of taking pleasure in it... are widely considered to be 'proto-prostitutes,'" and are referred to by such words as "sluts" and "tarts." Pheterson explains (1996, 12) that the "whore" stigma, "although it explicitly targets prostitute women, implicitly controls all women," by subjecting them to accusations of unchastity:

The whore stigma is a ready instrument of sexist attack against women deemed too autonomous, be it in self-defense or simply in self-expression, such as women who speak out against men who abuse them, visible lesbians, ...streetwalking prostitutes, unveiled women, or even women whose breasts... are deemed too big; it is likewise suited to throw suspicion upon widows, battered wives, single mothers, women who travel – or walk home – alone... As a ready instrument of attack, the whore stigma can be used against any particular woman (or group of women) who serves to model or challenge male entitlement (damned if she does, damned if she doesn't).

Davidson proposes (1998, 132) that the "whore" stigma is evident through the disciplining effects that women experience growing up in Western society. She states that the disciplining of women occurs in many ways, "some of which are subtle, some of which are crude and brutal," but that all women "grow up with a clear, even if often tacit, understanding" of the boundaries of women's appropriate sexual behaviour and "the precarious and conditional nature of their status within the sexual community." Thus she states that it is misleading for

feminist analyses to "play down the dissimilarities between the condition of prostitute and non-prostitute women," because the "whore" stigma ensures that, as women, "we are all oppressed by patriarchy" (Davidson 1998, 132).⁸

The argument can be made that the "whore" stigma is a structural creation of gender inequality because it applies to women, but not men. For theorists such as Davidson (1998, 127), this is related to the "double standard" which most societies apply to male and female sexual behaviour." She explains, "A man who uses prostitutes is often considered to be acting in a fashion consistent with the supposed attributes associated with his gender," while "a woman who works as a prostitute is viewed as acting in a way wholly inconsistent with her gender identity. Thus we find that prostitution and, by default, prostitutes have been, and still are, vilified." In this way, the "whore" stigma causes prostitution to be seen to reflect on female character, but not male character. Pheterson describes (1996, 48) how the use of prostitutes by men is considered to indicate more a lack of restraint than a lack of character, because while men are condemned for their actions as clients, this is not seen to reflect on their character. Conversely, prostitutes are judged on their character and assigned the "whore" identity: "she is bad for who she is and he is bad for what he does." This tendency is exemplified by Svanstrom's findings (2005) of the unequal treatment of prostitutes and clients in the case study of Sweden, as well as by the findings of the Government of Canada (1989, 1993) that female prostitutes are more heavily punished than their

⁸ The notion that all women are similarly oppressed by patriarchy is largely rooted in Engels' (1972, 134) historic reference that bourgeois marriage "turns often enough into crassest prostitution – sometimes of both partners, but far more commonly of the woman, who only differs from the ordinary courtesan in that she does not let out her body on piece-work as a wage-worker, but sells it once and for all into slavery."

male clients, and have a more difficult time leaving behind the social stigma if they try to leave prostitution (Allinott 2004).

What is the source of the "whore" stigma? Many theorists argue that it is symptomatic of a combination of the structural features of Western industrialized countries that are oppressive to women, including the division of political matters into public and private spheres, the enduring concept of male property rights, and common myths surrounding male and female sexuality. Understanding the root of the "whore" stigma requires examining how prostitution represents a transgression of each of these structuring elements of Western society.

The public-private divide

Some theorists relate the "whore" stigma to the theoretical separation of the public and private spheres that characterizes Western culture. Carpenter describes (2000, 8) the public/private split as an "arbitrary yet meaningful organizing principle of modern liberal democracies," in which the "public sphere is associated with the world of government, work, and contract, and is rational, objective, and impersonal," while the "private sphere is associated with familial relations and leisure, and is emotional, personal, and subjective." Carpenter states (2000, 8) further that feminists have recognized that this public/private division also represents a gender divide, wherein the public sphere is masculine (acknowledged as organized with men's natural attributes, roles, practices, and capacities in mind) while the private sphere is feminine (associated with women and their natural attributes, roles, capacities, and practices).

The difficulty arises with prostitution because, in Western society, money, commerce, and contract are attributed to the public realm of work, while intimacy, desire, and pleasure are attributed to the private realm of familial and other affective relationships. As a result, according to Zatz (1997, 294), "sexuality and money are thought of as things that cannot, do not, and/or should not mix." Davidson reaffirms (1998, 128-129) that, "prostitutes are typically considered to be dishonoured by their transgression of codes and conventions pertaining to money-making as well as sexuality," and essentially for attaching a monetary value to something which Western society considers cannot/should not be bought and sold.

Carpenter proposes that prostitution presents a paradox for the public-private divide, as prostitutes are seen as simultaneously transgressing *and* reinforcing the boundary between the public and private spheres. Prostitution, she argues,

is seen in two contrasting (yet related and complementary) ways. On the one hand, prostitution is understood to utilize the natural attributes of men and women – women as accessible and desirable, men as active and in need of, or having a desire for, sex. In this case, prostitution is conceptualized as a sexual relation occurring in the private sphere... Prostitution, however, as the public selling of sex, also appeals to the notion that prostitution is a public contractual relation between a seller and a consumer (Carpenter 2000, 106).

As a result, Carpenter argues (2000, 107), the public-private divide as an organizing feature of Western society creates contradictions in the ways prostitution is currently known. She asserts that challenging these understandings requires "acknowledging both the public (commercial) and private (sexual) aspects of prostitution," and "positioning it as a sexual contract" so as to recognize the ambivalent and contradictory status of the prostitute as both inside

and outside the rights of contract, "as both deviant and worker, embodied and disembodied, natural and unnatural, subject and object" (Carpenter 2000, 115).

Some prostitution theorists believe that the public-private divide must be challenged because it creates an artificial separation that devalues women's work by confining it to the private sphere; as such, prostitution can be understood along the lines of liberal feminism as an issue of equal labour rights. As McClintock argues (1992, 72-73), "the problem of social value embodied in the "whore" stigma is the historical contradiction between women's paid and unpaid work."

She proposes:

Prostitutes stand at the flash points of marriage and market, taking sex into the streets and money into the bedroom. Flagrantly and publicly demanding money for sexual services that men expect for free, prostitutes insist on exhibiting their sexwork as having economic *value*.

Zatz (1997, 295) adds that the public-private divide obscures how the public sphere of the market and the workplace is structured by desires, and the private sphere of affective relationships is organized to perpetuate productive and reproductive labour crucial to the functioning of the market. He states that this obfuscation privileges men for their status in the public sphere of rationality, and places a burden on women, "whose labor goes unrecognized or undervalued because it is cast as the purely private expression of love."

Male property rights

Related to the Western liberal democratic notion of the public-private divide is the concept of male property rights, wherein women (including their bodies and labour), as part of the private sphere, have traditionally been considered the property of the men. Mellor describes (1997, 168-171) how the

relegation of "women's work" to the private sphere has excluded them from formal patriarchal capitalist economic structures, leading to exploitation where, in some cases, even basic subsistence is denied. Collins relates (2006, 303) Guillaumin's analysis (1995) of the male appropriation of women's bodies, as she states:

The seizure of women's time, claiming the products of their bodies such as children, mandating that women use their bodies to fulfill a sexual obligation, requiring that women's bodies provide physical care for children, the elderly, the sick as well as healthy men, all illustrate how men as a class feel that they can appropriate the bodies of women as a class. Guillaumin points out that people only publicly take that which they feel already belongs to them, as in the case of public harassment of women in the workplace and on the street.

Relating the notion of male property rights to prostitution, Pheterson (1996, 16) paraphrases Engels' (1972) parallel between prostitution and marriage, as she states that, "the legal difference between marriage and prostitution is a difference between private and public appropriation of women." This assertion echoes Emma Goldman's (1911) well-known quote, that "it is merely a question of degree whether [a woman] sells herself to one man, in or out of marriage, or to many men." Whereas marriage represents individual male ownership of one woman, women in prostitution are understood as "common property," to be "used" by all men. (This is the root of the expression "common prostitute" used in laws against prostitution described in the case of Canada.) In the case of male property rights, therefore, transgression is committed by prostitutes who claim the right to work independently (without a pimp), by refusing to be the property of one man, and demanding to be paid for services that men expect for free.

McClintock (1992, 78-79) explains:

A prostitute who removes her body from the stock of male property, and claims it for her own, removes her body from the sphere of male law, which exists to negotiate the

distribution and circulation between men of property and power... By publicly selling sexual services that men expect for free, prostitutes transgress the fundamental structure of the male traffic in women.

Pheterson states (1996, 17) that transgression lies neither in women's provision of services to men, nor in receiving money or goods for sexual service, but in "*explicitly asking for and taking money for sexual services – or by refusing to service men in whatever domain.*" Thus even non-prostitute women may carry the "whore" stigma for actions that challenge male ownership of their bodies: "be it by asserting their right to reproductive choice, by insisting upon their own sexual pleasure, by refusing marriage, or by claiming sexual and economic autonomy as lesbians."

Pheterson claims (1987, 225) that the "view of the 'female as either pure or common to all' works to condone male violence against so-called unchaste women, and to blame those women for any abuse they suffer," while providing them with little recourse when abuse occurs, as it frequently does. McClintock (1992, 76-78) concurs that this aspect of the "whore" stigma is used to justify non-enforcement of laws to protect prostitute women, as she states that, in the minds of law enforcement officials and the criminal justice system,

all prostitutes share a common identity that makes them essentially and universally unrapeable... [The] notion that a whore cannot be raped finds its logic in an ancient tradition that defines rape not as an affront to women but as an affront to male property rights... Since rape is a crime against a man's property, and since the prostitute is a *common prostitute*, the prostitute no longer has private property value for men. By 'opening herself up' to any man, the prostitute ruins her potential value as private property for a single man and becomes, by definition, unrapeable.

Alexander reaffirms (1997, 92) that "police, prosecutors and judges all too often believe that a prostitute, by definition, cannot be raped, and refuse to enforce the law when one is." Pheterson cites (1997, 225), for example, the

findings of a Dutch research study which revealed that "policemen ranked the rape of street prostitutes as the least serious of all possible rapes ... The researcher asserts that rape is judged according to the risk taken by the woman in her behaviour and whereabouts," implying that women who do not follow society's tacit restrictions on female behaviour (sexual and otherwise) deserve to be punished. This is consistent with the findings of the previous chapter, that the Dutch police were perceived as ineffective in helping women who were victimized in prostitution because they did not view the plight of prostitutes as important.

Alexander asserts (1997, 92) that Western society tolerates the "blatantly discriminatory, random, and corrupt use (or non-use)" of laws against rape and assault when the victim is a prostitute "because they define prostitutes as outside of the common law, entitled to no human rights protections." In some ways, this view of prostitutes as outside the protection of the law extends even as far as murder, as Alexander (1997, 92) states, "when prostitutes are murdered, police make little effort to find the killer unless or until he kills someone who is not a prostitute. Far too often, the murders go unsolved, or even unacknowledged." This situation has been seen in recent years with the serial murders of street prostitutes in large Canadian cities such as Vancouver and Edmonton (further complicated by racial and colonial discriminatory attitudes, as the majority of the women in both cases were aboriginal). A 2006 report by Statistics Canada finds that "the extreme vulnerability to violence by women in the sex trade often goes unnoticed"; according to police reports, "between 1991 and 2004, 171 female

prostitutes were killed and 45 percent of these homicides remain unsolved" (Statistics Canada 2006, 39). The *Canadian Medical Association Journal* (2004, 109) cites a comparable U.S. study that finds that homicide is the most common cause of death for prostitute women, and that "the homicide rate among active female prostitutes was 17 times higher than that of the age-matched general female population." A recent report by the Commons Subcommittee on Solicitation Laws finds (2006, 18), moreover, that statistics on the homicide rate of prostitutes in Canada are "almost certainly lower than the real figures" (Dabu 2006).

Pheterson explains (1987, 225) that, in Western society's view, the death of a prostitute by murder or disease is justified by her sexual unchastity, which "is perceived as a choice wrought with shame and vulnerability. Violence, illness, and most extremely, death are considered the punitive consequences of self-imposed danger." She says the murder of a prostitute is "as much an incrimination of her reputation as of the murderer's crime," and rather than causing worry, grief, or outrage to the general populace, the murder of "whores" serves "to warn other women of the perils of sexual unchastity," and is "likely to increase public dissociation from whores" (Pheterson 1987, 226).

Myths surrounding male and female sexuality

A third element of Western society that contributes to the "whore" stigma are the myths surrounding male and female sexuality. As discussed previously, theories that rely on a naturalized view of sexuality have the effect of reinforcing the stereotypes that justify the stigmatization of women (and men) who transgress

them. Pheterson (1987, 224) points to the myths in Western cultures that "female behaviour causes male sexual violence," and "that male sexual violence causes irreparable damage to female personality. Women are thereby not only violated, but also blamed and stigmatized." Vance (1984, 3-4) proposes that this is due to perceptions of sexuality depicting "male lust as intrinsic, uncontrollable, and easily aroused by any show of female sexuality and desire," and women's sexuality as something that "cannot be freely or spontaneously shown, either in public or in private," for fear that it will incite men's sexual violence:

Instead, female desire should be restricted to zones protected and privileged in culture: traditional marriage and the nuclear family. Although the boundaries of the safe zone have been somewhat renegotiated...gross and public departures from 'good' woman status, such as lesbianism, promiscuity, or non-traditional heterosexuality, still invite – and are thought to justify – violation (Vance 1984, 3-4).

Pheterson adds (1987, 224-5) that "being accosted is evidence of a lack of virtue, or unchastity," because "a woman victim is classically accused of having provoked, invited, or not resisted sexual violation." This is particularly the case for prostitutes, as they "serve as models of female unchastity" and are thus assumed to invite male violence.

This view of male sexuality was challenged by feminists for being misogynistic and blaming the female victim while letting men off the hook. This challenge led, according to Vance (1984, 2), to the rejection of the traditional bargain wherein women were required to be sexually circumspect in exchange for male protection, otherwise, men could violate and punish them. She states, however, that, despite the breakdown of this bargain, "women's fear of reprisal and punishment for sexual activity has not abated." Instead, "the threat of sexual

attack serve[s] as a powerful reminder of male privilege, constraining women's movement and behaviour" (Vance 1984, 3). As a result,

women are encouraged never to explore or experience our alternative sexual feelings... We are supposed to exist sexually within a (married, monogamous) relationship with a man, or else not at all. When we do step across the boundaries of compulsory heterosexuality and 'good girl' propriety, we are often treated viciously (Queen 1997, 127).

In this way, women "come to experience their own sexual impulses as dangerous," as something to be repressed as it may cause them to "venture outside the protected sphere" (Vance 1984, 4), and become a legitimate target for abuse.

Therefore, out of supposed concerns for women's safety, Western culture has come to produce a distorted image of women's sexual identity as passive, evidenced by Shrage's description (1994, 135) that woman's active pursuit of sexual gratification is regarded as "somehow grotesque because such pursuits involve her assumption of sexual authority and leadership, and this illicit assumption of social power on her part distorts and deforms aspects of her identity as a woman." As a result, women's sexual freedom is denied because this image of her sexuality "renders a whole range of liberties incompatible with female legitimacy" (Pheterson 1996, 11). According to Shrage (1994, 134), laws criminalizing prostitution are seen by some as part of a pattern of the social enforcement of these repressive norms of feminine sexuality. Alexander concurs (1987, 184) that these laws contribute "to the stigmatization and suppression of all active and autonomous expressions of female sexual desire," while preventing "all women from determining their own sexuality." She states that, while concerns about women's sexual safety have appropriately focused on a woman's right to say "no" to sex, there has not been enough focus on her right to say "yes";

the "whore" stigma, along with laws criminalizing prostitutes' actions, deny all women "the right to signal an interest in sex, initiate sex, or agree to have sex if we set economic terms for it," by reinforcing traditional conventions regarding female sexual display and behaviour (Alexander 1997, 85). In Vance's (1984, 4) view, this may ultimately result in "the internalized control of women's sexual impulses, poisoning desire at its very root with self-doubt and anxiety."

3.3 Challenging the dichotomy – Toward a new view of female sexuality

It is important to draw from this discussion that the "whore" stigma is problematic not only for prostitutes, but for all women who are concerned with promoting gender equality and being liberated from the patriarchal system that assigns women's sexual roles. I propose that the main problem for feminists is the way the "whore" stigma divides women and prevents the development of a productive discourse against heterosexist patriarchal control of women's sexual freedom and self-determination. A rejection of this dichotomy may allow Western society to reject the naturalistic assumptions about sexuality in favour of sociological and historical analyses which view it as a contested terrain, while allowing women to begin to construct a more authentic sexuality.

Pheterson proposes (1996, 14) that the "whore" stigma is "woven into the general pattern of female lives" within Western society and works to divide women by enforcing the belief that "women are either legitimate or illegitimate." This division creates a stigmatized "other" against which non-prostitute women must dis-identify. Pendleton argues (1997, 73) that prostitutes

have historically operated as an 'other' against which varieties of white female sexual identity have constructed themselves. Heterosexuality as a social system depends upon the spectre of unchastity in order to constitute itself; the 'good wife' as a social category cannot exist without the 'whore', whether she takes the form of a prostitute, an insatiable black jezebel, a teenage mother, or a lesbian. Each of these othered positions exists to reinforce the norm of white procreative heterosexuality.

Nagle (1997, 5) argues that the "othering" of prostitutes as an undesirable category with which women do not wish to be affiliated "informs and constricts women's every move, i.e., 'I could never wear/say/do that, someone might think I'm a whore!'" ; this is because a prostitute is "something that women are not only not supposed to *be*, but also, not be *mistaken* for." This division translates into a mandate for non-prostitute women to demonstrate "affiliation with the privileged half of the good girl/bad girl binary" (Nagle 1997, 5).

As a result, prostitution theorists, such as Davidson (1998, 133), point out that "'good' women are often among the most vociferous defenders of the existing sexual status quo, and the most unforgiving of those who transgress gendered... sexual codes," in an attempt to maintain their tenuous hold in the "imaginary community" of dominant patriarchal society. She explains,

the rules and conventions which govern sexual life in that community may be patriarchal, constructed by and for men's 'benefit,' but they do also afford women a limited degree of control over men's sexual access to their persons... The women in this community cannot exercise sovereign rights over their own bodies and selves in the same way that men can, but they are nonetheless entitled to protection from those forms of invasion that are outlawed by the sexual contract which men have agreed, and it is their *right* to this protection which they assert when they denounce prostitute women (Davidson 1998, 133).

Pheterson argues (1996, 12), however, that it is misdirected for non-prostitute women to struggle against the "whore" stigma by dis-identifying with prostitutes, stating that "such resistance is both ineffectual, since the accused are not allowed the privilege of self-definition, and self-denying, since disassociation from the label 'whore' means for women a renunciation of freedoms reserved for

men.” Instead, Valverde states (1985, 134) that it is necessary to emphasize the “connection between the madonna and the whore, the wife and the mistress, the mother and the sex worker,” because separating “the virtuous mother/wife from the stripper and the hooker... is to fall into the patriarchal trick of isolating women from each other,” while ignoring how “patriarchal values have historically oppressed both the wife and the slut, the mother and the stripper.” Valverde argues (1985, 135) further that the division of women is as harmful for women on the “good girl” end of the spectrum as for those on the “bad girl” end, because it does nothing to challenge the patriarchal structure that constrains all women:

If we object to women being depicted as ‘sluts,’ surely the feminist response is not to flee into the opposite stereotype and proclaim our virtuousness and innocence.... There are two poles to the double standard, and we cannot claim to be undermining patriarchy if we criticize only the male pole and reinforce the feminine end of the deal. We have to deny both sides of the double standard. We have to acknowledge that the myth of the madonna is as false as the myth of the whore, and that both myths form a single whole.

Instead of allowing women to be divided along the patriarchal lines of chaste or unchaste, madonna or whore, Pheterson proposes (1987, 227) that we must reject these dichotomies altogether and liberate all women from unrealistic images of chastity: “the task of recognizing unchastity as a normal human reality and not as a peculiar condition of inferior humans calls for a profound transformation of values and attitudes.” This will require challenging the patriarchal construction of the “whore” stigma that divides and disciplines women. As Pheterson warns (1996, 89), “the menace of the whore stigma acts as a whip holding female humanity in a state of *pure subordination*. Until that whip loses its sting, the liberation of women will be in check.”

Developing a more comprehensive approach to prostitution requires realizing the shortcomings of the dogmatic views espoused by feminists on both

sides of the debate. DuBois and Gordon (1984, 43) challenge the view of sex radicals, stating that we must not make the mistake of believing that "ending sexual inhibition in itself could save women. Instead, we have to continue to analyze how male supremacy and other forms of domination shape what we think of as 'free' sexuality." At the same time, Vance notes (1984, 7) that focusing solely on women's oppression does not in itself make the world safe for women: "If women increasingly view themselves entirely as victims through the lens of the oppressor and allow themselves to be viewed that way by others, they become enfeebled and miserable."

Rejecting the oppressive dichotomies that constrain women's sexual choices and reinforce the stigma of prostitution requires understanding sexuality, in Valverde's words (1985, 19), "as an open terrain in which the powers of the state, of the scientific and moral establishments, and of the sexist ideology of male-defined pleasure are constantly meeting *resistance* from individuals and groups," which would give us a starting point to "challenge the ideas and power of those who have created the oppressive institutions." She adds, "by simultaneously emphasizing the variety of our own sexual *experiences*, we can try to highlight the ways in which we resist these social forces, counteract them, and sometimes even manage to change them" (Valverde 1985, 18). DuBois and Gordon propose (1984, 43) that we are particularly well situated at this time to engage in this project of change and resistance, as they state,

women have possibilities for sexual subjectivity and self-creation today that did not exist in the past. We have a vision of sexuality that is not exclusively heterosexual, nor tied to reproduction... We have several strong intellectual traditions for understanding the psychological and social formation of sexuality. Perhaps most important, we have today

at least a chance at economic independence, the necessary material condition for women's sexual liberation.

When it comes to many of the issues of gender inequality that feminists have contested, increased understanding and profound social change have been made possible by incorporating a variety of analytical frameworks and allowing for multiple understandings of the complex phenomena that women deal with in their lives. Prostitution, however, remains an area of struggle for feminists, mired in disagreement and conflict. I have attempted to show that prostitution is an issue that is tied into Western society's oppressive control of women's sexual and social roles, and that this understanding has a divisive and disciplining effect on all women. As such, prostitution is an issue that urgently requires a close examination of what can be done to liberate all women from the patriarchal constraints of the "whore" stigma. Alexander summarizes (1997, 84) the frustration of feminist prostitution theorists when she states,

I believe that as long as women are arrested for the crime of being sexually assertive, for standing on the street without a socially acceptable purpose or a male chaperone, I am not free. As a woman and a feminist, I believe we will never have rights, opportunities, choices, work options, or an income equivalent to men's unless we can stop being afraid of being either raped or called a 'whore.'

Conclusion

This study has attempted to show that prostitution is a complex and contentious issue for feminists; the case studies presented above reveal that neither of the main feminist approaches to prostitution (liberal/sex radical feminism in the Netherlands and radical feminism in Sweden), nor the non-feminist "public nuisance" framework in Canada, has led to policies that adequately address all the challenges and harms of prostitution. This is because, while both the "prostitution as work" and the "prostitution as oppression" perspectives provide important analytical frameworks for understanding prostitution, taken separately they are insufficient because their analyses use essentialized images of "the prostitute." Instead, elements of these approaches must be taken together, in order to understand the breadth of women's individual experiences in prostitution, while at the same time accounting for the structural features of patriarchy that circumscribe women's sexual existence in Western society, and limit their economic and social opportunities.

As a result, this concluding section proposes that policies to deal with prostitution in Canada and other Western industrialized countries cannot focus solely on imposing or removing criminal measures; instead, addressing the issue of prostitution requires reformulating the various laws and social programs that construct the practice and experience of women in prostitution, and working to address the root causes and dynamics that cause the harms of prostitution. Beyond creating a system of laws and regulations to enhance prostitutes' safety, Canadian policy needs to focus less on labeling prostitutes "social deviants" and a

source of "public nuisance," or prostitution as a "vice," and more on understanding the unequal power relations that leave some women with few alternatives to prostitution, or cause discrimination against women in voluntary prostitution. This will require policies that take into account the complexity of prostitution and the diversity of women's experience in the industry. For women who lack meaningful choice about engaging in prostitution and do not wish to continue, they require policies aimed at helping them leave prostitution, by reducing the barriers they face in the economic and social realm, interlinked with issues of race, class, sexuality, and cultural factors. For women who do wish to pursue prostitution as part-time or full-time work, they require policies that protect their labour and human rights, and allow them sexual self-determination. Beyond simply ensuring these rights, policies to protect prostitutes must challenge the system of "compulsory virtue" that stigmatizes women who engage in commercial sex, and allows them to be victimized by police, clients, and the judicial system.

This concluding section outlines three steps that need to be taken, in consultation with prostitutes and prostitute activist groups, that I propose may lead to opportunities to develop prostitution policies that are effective in improving the lives of prostitutes, and of all women in Western society. The first step involves the decriminalization of prostitutes and their activities (as has already occurred in the Netherlands and Sweden, and as prostitutes and prostitute activist groups are pushing for in Canada), followed by the removal of criminal sanctions against other parties (clients, spouses and children living off the avails

of prostitution), as long as they are not exploiting the prostitute. The second step involves reformulating and/or enforcing laws and policies in other areas that affect prostitutes, including laws against exploitation of and violence against women, laws for enforcing business contracts, laws on workplace health and safety, and policies that ensure access to social programs. The third step involves addressing the underlying economic and social factors that disadvantage women and restrict their choices.

First steps – decriminalization and involvement of prostitutes

Chapkis states (1997, 155) that one of the major problems for prostitutes is "the unregulated status of the sex trade," and their uncertain status as "pseudo-employees of brothels, parlors, clubs, houses, and escort agencies. They rarely attain the status of employee because, with few exceptions, such businesses are formally prohibited." Zatz adds (1997, 304) that, because of prostitutes' criminal status in many countries, their "access to institutional power and ability to organize for more are frustrated by economic and legal marginalization." He states that the criminalization of prostitution excludes prostitutes from the social benefits of legitimate employment, and undermines the possibilities for financial independence. This causes prostitutes to rely on pimps and alliances with organized crime and drug trafficking for survival.

Prostitutes in countries where their activities remain criminalized are increasingly challenging "the identification of prostitution as a social problem to be simply swept from the streets by police," and demanding to be "brought into view as social subjects, rather than merely as social problems. Activists are

demanding inclusion in the relations that organize their work and construct their public identities" (Brock 1998, 137). Brock states (1998, 138-139) further that,

Through developing an activist voice, [women working in prostitution] are stating that they are not simply hapless dupes of patriarchal relations. They want more control over their working conditions and the same rights and responsibilities as other political subjects. The accomplishment of this end requires the decriminalization of prostitution.

As the second chapter of this study discussed, prostitution advocates recognize that decriminalization of prostitution is a problematic strategy, as decriminalization (the removal of criminal sanctions) necessarily leads to legalization and regulation, as prostitution becomes, by default, subject to regulations involving licensing, zoning, and other concerns. To this, Brock adds (1998, 141) the consideration, in the Canadian context, that

should the federal government relinquish control of the right to regulate prostitution, the door will be open for provincial and local governments to develop their own regulatory strategies. While not criminal procedures, their effect may be as or more stringent. As well, there is nothing to prevent police from using bylaws, even those that are non-prostitution specific, against even the most unobtrusive prostitute. A reform of law does not necessarily imply a reform of policing practices.

Shrage states (1994, 83) that, while feminist supporters of decriminalization tolerate some regulation of prostitution, the type of regulations they propose "are limited to the minimum necessary to prevent business fraud and coercion," and stem from the belief that "the state should not treat commerce in sex as a special sort of industry requiring a special regulatory apparatus to protect consumers, workers, or state and community interests." Chapkis reaffirms (1997, 160) that prostitutes' rights activists support regulatory measures directed at businesses rather than at prostitutes themselves, and these measures should be intended to enforce fair and safe working conditions in organized prostitution. In practice, however, Chapkis states (160-161):

existing regulatory schemes such as zoning and licensing of prostitution businesses traditionally have been implemented without attention to workers' interests, while protecting the interests of clients, owners, and local municipalities. For instance, zoning laws which restrict the sale of sexual services to specified geographic areas to ensure police surveillance and facilitate the control of "public nuisance" problems, often tend in practice to increase risks for working women by designating zones in dangerous areas without lights, telephones, homes, or shelter.

She argues, then, that "without placing sex workers' concerns at the center of proposed policy revisions, movement toward legalization will no better safeguard prostitutes' rights than has prohibition" (Chapkis 1997, 140).

As mentioned, Canada is the only one of the three case studies that has not yet decriminalized the activities of prostitutes themselves. But despite failed efforts in recent years to amend the prostitution provisions of the Criminal Code, including the introduction of private member's bills in the House of Commons purporting to decriminalize prostitution, prostitute advocate groups and feminist politicians continue to work toward that goal. In the summer of 2005, a group of federal MPs spearheaded by New Democratic MP, Libby Davies, toured Canada's main cities, studying options for law reform dealing with all forms of prostitution, while around that time the young Liberals branch of the federal party also introduced a resolution to decriminalize prostitution (Mann 2005). In January 2007, a leading advocacy group for decriminalizing prostitution in Canada, Sex Professionals of Canada, initiated the process of challenging the constitutionality of laws (including the communicating, pimping, and bawdy house laws) that it says endanger the lives of sex workers across the country. Valerie Scott, executive director of the organization and one of the plaintiffs in the case, told the CBC that they would be filing in the Ontario Superior Court of Justice, and are

hoping to get a judgment from them within two years, after which time they will take the case to the Supreme Court of Canada (Dabu 2006).

"Beyond Decriminalization" – Other laws concerning prostitutes

The second step toward developing effective prostitution policy involves reformulating other areas of law and policy that deal with prostitution and related activities. Decriminalization, in Chapkis' words (1997, 156) is "just the first step; it must be followed by policies formally placing prostitutes under standard employment laws and regulations," and these "policies must be aimed at regulating the industry of prostitution, not prostitutes themselves." Davidson concurs (1998, 209) that it is necessary to pursue reforms that will "make it easier for prostitutes to work independently of third parties, increase the degree of control they exercise within transactions, and provide greater protection and support for those who prostitute." With this purpose in mind, in anticipation of the future decriminalization of prostitution in Canada, and in consultation with prostitutes and prostitute advocate groups, the Pivot Legal Society of British Columbia completed a report titled *Beyond Decriminalization* (2006) to examine areas of Canadian law that would become relevant and applicable in a decriminalized context. The analyses and findings of the report "are intended to encourage Canadians to consider how reform of other areas of law and policy can be used to end the violence, discrimination and other human rights violations faced by sex workers" (Pivot 2006, 8).

The report outlines reforms that are required in each area of Canadian law that affects prostitution.⁹ The first area addressed is criminal law. Beyond the repeal of criminal laws relating to prostitution, what is also required is the equal application and enforcement, when prostitutes are victims, of criminal laws that protect all Canadians from exploitation and violence. The report states that prostitutes "emphasized that they want full access to police protection as well as rigorous enforcement of laws when they are victims of crime, including when they are subject to exploitation by pimps or clients" (Pivot 2006, 222).

Elsewhere, Alexander expands on this point (1997, 93), stating that prostitutes are demanding that laws against coercion, "including rape and other sexual or physical assault, kidnapping, extortion, false imprisonment, and fraud," be enforced against their abusers. She also emphasizes it must be recognized that the human rights abuses that prostitutes suffer are more than individual acts committed by clients and pimps, they are structural forms of violence that include "crimes of commission and omission" perpetrated by legislators and police (Alexander 1997, 93).

The second area of Canadian law discussed in the report is law that regulates employment, labour and occupational health and safety, which should be applied to improve working conditions in the sex industry. The report states that amendments to the existing employment standards are not required, as

⁹ In addition to the issues discussed here, the report also highlights that prostitutes should have the right to unionize, that workers in the sex industry should be integrated fairly into the federal taxation scheme, and that a woman should not automatically lose custody of her children if she is a prostitute. A further point was that a woman should not be forced into prostitution if she has no other employment. Thus, the report emphasizes that she should not lose access to Employment Insurance if she chooses *not* to participate in the sex industry (Pivot Legal Society 2006).

prostitutes felt that "the existing protections were sufficient in the context of their work. However, they suggested that the legislation should contain an explicit provision that sex workers never lose their right to terminate a contract for sexual services at any time for any reason" (Pivot 2006, 223).

The report further addressed the issue of municipal regulation, stating that municipal governments "should begin to meaningfully engage sex workers in planning in order to develop a mechanism of licensing and zoning that fits both the needs of sex workers and their communities" (Pivot 2006, 223). It was suggested that any licensing scheme should not be so oppressive as to limit or restrict prostitutes who wish to work independently or in small owner-operated businesses from doing so, and that any zoning scheme "should be guided by concerns for the safety, privacy and autonomy of sex workers" (Pivot 2006, 223).

Overall, it was emphasized that

A full range of business structures should be available to accommodate the diverse ways in which sex workers will want to conduct business. Sex workers should have the freedom to choose the way in which they structure their businesses, just as other businesses do, and not be subject to any legislative restrictions on possible business models. Additionally, sex workers should always have the ability to work independently, and not be pressured financially or otherwise to work for an employer (Pivot 2006, 224).

Above all, the report stressed the importance of including prostitutes in the law and social reform process, and that any decisions about prostitution law and policy must provide the prostitutes who are affected by these laws with:

a prominent role in the process of law, policy and social reform. Sex workers have a unique insight and expertise regarding their industry, the role it plays in Canadian society, and the ways in which regulatory schemes will impact their business. Above all, law and policy makers should listen to sex workers in order to understand how the laws affect them. This is a necessary step in ensuring that Canada's laws comply with the guarantees and protections enshrined in the *Charter* and other human rights instruments (Pivot 2006, 9).

In conjunction with the reformulation of domestic laws that affect prostitution, what are also required are changes in the enforcement of legal frameworks addressing sex trafficking at the international level. Such measures would not address all of the problems related to the social construction of women's "choice" in entering prostitution, but would help abolish the most egregious cases of forced prostitution. Malarek points out (2003) that while most countries have appropriate legal frameworks for tackling sex trafficking and its associated crimes of rape, imprisonment and assault, there is a lack of political will and a continuing stigmatization of women in prostitution, particularly foreign women. He states that addressing international sex trafficking requires a "committed, all-out frontal assault" stemming from the will of political leaders, and put into practice by prosecutors and police officials, many of whom, he claims, currently are corrupt and enable the trade to thrive by looking the other way, as was a concern in the Netherlands. Traffickers need to be tried for their crimes, and to be dealt a punishment that reflects the severity of the damage done to these women, including "heavy prison time and confiscation of all profits amassed on the backs of these women," rather than tolerating buying and selling women as a mere misdemeanor. Furthermore, he proposes that clients "caught using the services of trafficked women and girls should be served notice that they too will be rounded up, charged, prosecuted, and jailed" (Malarek 2003, 260-261).

In the source countries, such as former Soviet bloc and Eastern European countries, Malarek argues (2003, 266) that governments "must do their part in chasing down and jailing local traffickers and corrupt officials. They must also

implement strong and meaningful public awareness campaigns. Young women need to be made aware of the extreme risks and dangers they face." He also describes a need to address the "push factor" of prostitution, including "the economic and social conditions that drive women and girls from their homelands in search of work" (Malarek 2003, 206). The need to address these structural social and economic factors also applies for all prostitution in Western society, and constitutes the third step of any comprehensive approach to prostitution policy, as discussed below.

Wider policy changes

Finally, the third step toward developing effective prostitution policy requires an examination of the wider social and economic factors that underlie prostitution, in order to develop an approach that addresses its many complex causes and dynamics. As Shrage points out (1994, 82) "solutions to prostitution should not involve punitive state power, but a redistribution of social and economic opportunities. For the criminal prohibition or regulation of prostitution does little to change the conditions of women's lives that lead them to prostitution." Brock agrees (1998, 140) that "criminal legislation cannot address the causes of prostitution; it merely perpetuates unequal power relations." The reality, in Brock's view (1998, 140-141), is that

as long as prostitution appears to be the most favourable option available, some women ... will continue to use it as a source of livelihood. The sex trade will continue to be a viable option for women, particularly working-class women, as long as they are faced with unequal pay and poor job prospects, unfavourable educational streaming, a high cost of living, inadequate services such as childcare, and the lack of reproductive freedom to determine when and how many children they will have.

Rather than focusing on the issue of prostitution in isolation from its social and economic context, or as an essentialized and unchanging practice, government policy should seek to transform it through taking measures to empower prostitutes themselves and change the context of unequal power relations in which it occurs (Brock 1998, 146). The objective of prostitution policy, therefore, should ideally be the creation of a more egalitarian society in which no woman is forced into prostitution through coercion, economic necessity, or social conditions, and where prostitution (if it continues to exist) would not be reflective of inequalities between client and prostitute, of an overarching regime of patriarchy, racism, classism, or of antiquated notions of male and female sexuality, but would potentially be a private transaction between consenting adults. Indeed, as the Pivot Legal Society report points out (2006, 224), "it should not be assumed that all sex workers are seeking to exit the sex industry." Instead, legislators, government policy-makers and law enforcement officials who make decisions that affect prostitutes and the sex industry should be provided with education and awareness in order to understand the complex nature of prostitution as located within a system of structural inequalities. Ferguson (1984, 111-112) also advocates addressing the social stigma of prostitution by raising consciousness within broader society about the conflicting assumptions inherent in our views of sexuality. She suggests using media such as feminist erotica, sex education, art, and literature to openly explore and question the contradictions in our contemporary sexual identities, ideologies, and institutions.

In the absence of the structural factors that create such inequalities, prostitution may cease to exist on its own, or may continue in an altered form that would be less harmful to women and society as a whole. Shrage (1989, 359) proposes that "the political alternatives of reformation and abolition are not mutually exclusive: if prostitution were sufficiently transformed to make it completely non-oppressive to women ... prostitution as we now know it would not [exist]." It is unlikely that we could ever eliminate the possibility that a person will trade sex for money, but we can reduce the possibility that it will take place in a context of systemic oppression for particular groups.

Changing the underlying social and economic dynamics of society to make the practice of prostitution less harmful to prostitutes will require major changes in the views of society, and this must be led by the form of feminist theorizing proposed in this study, that is, an approach that allows for broader understanding of women's varied experiences in prostitution, and aims to provide more meaningful choices for, and improving the lives of, all women. These changes to the status quo must then be pursued by all levels of government, policy-makers and law enforcement officials. The practices of Western society with respect to female prostitution (even, as was shown, in cases where it is informed by feminist discourses such as in the Netherlands and Sweden) are a reflection of Western society's stigmatizing attitude toward women who transgress the boundaries of their circumscribed sexual and social existence, as well as of classist, racist and heterosexist power relations. This study proposes that by addressing these factors of stigma and inequality, it may be possible to

conceive of prostitution as arising not from a constellation of oppressive power relations, but as a commodified sexual relation between equals, where we would expect to see equal participation in prostitution by people of different sexes, races, classes, and sexual orientations. It may then be possible for the sale of sex to derive not from the exercise of domination of the powerful over the powerless, but for purposes such as therapy, instruction, or companionship. While this study is not able to resolve the debate between liberal/sex radical feminists and radical feminists as to whether or not the commodification of sex is inherently oppressive, it has proposed that an indiscriminate rejection of the possibility of a woman's "choice" to be a prostitute is insufficient to guide policy. At the same time, it has proposed that we cannot ignore the features of structural inequality that shape and limit women's choices. Only by making fundamental policy changes aimed at eliminating the structural inequalities and negative stigma that shape the current practice of prostitution, and cause the abusive and discriminatory practices that harm prostitutes, may it be possible to achieve the feminist objective of improving the lives of prostitutes and all women.

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